CONFIDENTIAL

GOVERNMENT OF INDIA

WAR TRANSPORT DEPARTMENT



THE

FINAL REPORT

OF THE

ROAD-LANDS ENQUIRY COMMITTEE

1ST JUNE 1946

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Composition of the Road-Lands Enquiry Committee

Chairman.—Mr. W. C. Dible, C.I.E., I.C.S., Member, Board of Revenue, United Provinces.

Member and Secretary.—Dewan Bahadur B. V. Sree Hari Rao Naidu, retired Inspector General of Registration, Madras, and formerly Land Acquisition Officer. Vizagapatam Harbour.

Member.—Rao Bahadur A. Nageswara Iyer, retired Special Engineer, Road Development, Madras.

2. The Committee's terms of reference [*vide* para. 3 of the Government of India, War Transport Department letter No. PL 7(1)44, dated the 11th/13th December 1945] are:—

(1) To make an objective analysis of the subject of payment of compensation and recovery of betterment in respect of acquisition and public control of the use of land.

(2) To advise more particularly on the following:—

(i) what changes are required in the present land acquisition law:

(a) to ensure prompt acquisition of land required for public purposes *viz.*, for road and other developments,

(b) to ensure that such land is acquired on an equitable basis;

(ii) the possibility of stabilizing the value of land likely to be required for development purposes and possible means of so doing;

(iii) the principles to be embodied in legislation regulating ribbon development;

(iv) the steps that should be taken *to secure to the public* any betterment (or unearned increment) in land value arising from public expenditure on roads;

(v) the prevention and removal of encroachment on public lands.

(3) To advise on the framing of the necessary legislation for these purposes.

(4) To advise generally on the principles to be adopted to enable village roads to be developed without subsequent disputes as to the ownership of the land; and

(5) To report within two months as a matter of immediate urgency what steps to this end should be taken immediately to prevent plans of road and other developments being avoidably delayed or prejudiced.

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INTRODUCTORY

1. The Conference of Chief Engineers convened by the Government of India in December, 1943, to consider the planning of post-war road development recommended among other things that a Legal Committee should be appointed to gather information and advise on the following:—

First, (i) to enquire into defects, if any, in the present Land Acquisition Acts in force throughout British India and the changes that would be required,

(a) to ensure prompt acquisition of land required for public purposes, especially for road improvement;

(b) to ensure that such land is acquired on an equitable basis;

(ii) to formulate,

(a) the principles that should be embodied in a Ribbon Development Act to prevent ribbon development, and also to prevent the necessity of the Government being compelled to acquire roadside land, if the owner wishes to put it to other than its original use, and

(b) the steps that should be taken to secure to the public any betterment in land values arising from public expenditure on road development;

(iii) to advise on how to remove and prevent encroachments on all kinds of roads, and to advise on questions of legal ownership of the road land of village paths and lanes and land required for their further development.

And later, to advise on the drafting in outline of certain Model Acts, namely an Act to prevent Ribbon Development, an Act to secure to the public the betterment arising from public expenditure on roads, and a Highway Act. (Paras. 74—79 of the proceedings of the Conference of Chief Engineers of Provinces and States held at Nagpur from the 15th to 18th December, 1943).

2. When forwarding the above recommendations of the Nagpur Conference for the consideration and views of the Governments of the Provinces, the Government of India observed that the matters which the proposed Committee would examine were largely within the powers of those Governments and that, therefore, their co-operation would be essential for the proper functioning of the proposed Committee. The Governments were asked whether they agreed to such a Committee being set up. Most of the Provinces agreed. But, as there was delay in the setting up of the Committee, the Government of India confined itself to the solution of the immediate problems of how to expedite the administrative processes of acquiring land at a fair valuation and preventing speculators in land from making undue profits from land acquisition and land development at the expense of the rights of the community as a whole; and of how to prevent ribbon development along roadsides and of how to remove and prevent encroachments on roads.

3. Our Committee was constituted in the first week of December, 1945.

The Committee's terms of reference, as approved by the Government of India on the advice of the Central Road Board (*vide* para. 3 of the Government of India, War Transport Department's letter No. PL7(1)-44, dated 11th/13th December, 1945) are as follows:—

(1) to make an objective analysis of the subject of payment of compensation and recovery of betterment in respect of acquisition and public control of the use of land,

(2) to advise more particularly on the following:—

(i) What changes are required in the present Land Acquisition Law,

(a) to ensure prompt acquisition of land required for public purposes, *viz.*, for road and other developments,

(b) to ensure that such land is acquired on an equitable basis;

(ii) the possibility of stabilizing the value of land likely to be required for development purposes and possible means of so doing;

(iii) the principles to be embodied in legislation regulating ribbon development;

(iv) the steps that should be taken to secure to the public any betterment (or unearned increment) in land value arising from public expenditure on roads; and

(v) the prevention and removal of encroachment on public lands,

(3) to advise on the framing of the necessary legislation for these purposes,

(4) to advise generally on the principles to be adopted to enable village roads to be developed without subsequent disputes as to the ownership of the land; and

(5) to report within two months as a matter of immediate urgency what steps to this end should be taken immediately to prevent plans of road and other developments being avoidably delayed or prejudiced.

4. The Committee started work on 7th December 1945 and issued in the following week a questionnaire which is reproduced in Appendix I. The questionnaire was communicated to all the Provincial Governments and the Chief Commissioners for furnishing replies to the Committee. Replies have been received from all except the C. P. and Orissa. The Committee visited the Provinces of Bihar, Bengal and Madras within the first two months of its constitution, and submitted an Interim Report to the Government of India on 16th February 1946, which is reproduced in Appendix IV, in accordance with that part of our terms of reference which asked us to advise, as a matter of urgency, what immediate steps should be taken to prevent plans of road and other developments being avoidably delayed or prejudiced.

Briefly our recommendations were:—

(i) that all the Provincial Governments, except the Governments of the United Provinces and Bihar, should be advised to place an Officer on Special Duty to supervise the work connected with Land Acquisition in connection with the Post-war Reconstruction Schemes;

(ii) that in all the Provinces, in which no notifications have yet been issued under Section 4(1) of the Land Acquisition Act for the acquisition of land for the schemes for National Highways and other Post-war Reconstruction Schemes, notifications should be issued, dispensing with Section 5A immediately it has been decided what schemes are to be undertaken as a measure of urgency;

(iii) that the Provincial Governments be advised to take early steps to enact legislation to control ribbon development embodying the principles of the Delhi Restriction of Uses of Land Act, 1941, the U. P. Roadside Land Control Act, 1945, and the Bombay Ribbon Development Prevention Act, 1946, which had been published as a Governor's Act for objections, subject to consideration of the defects pointed out by us in the Interim Report; and

(iv) that such of the Provincial Governments as intend to peg the value of land to be acquired for Post-War Reconstruction schemes as on any date prior to the date of issue of notifications under section 4(1)

on account of specific reasons, should take early action to make public announcement of the intentions of the Government, as was done in the United Kingdom, so as to serve as a warning to intending purchasers.

5. We have toured the Provinces of Bihar, Bengal, Madras, Bombay, U. P., Sind, Punjab and Delhi and interviewed a number of gentlemen deputed by the Provincial Governments for the purpose.

The following gentlemen were co-opted as members of the Committee during their stay in the Provinces mentioned below:—

Bengal—

Mr. J. A. Parks, F.S.I., Chairman, Calcutta Improvement Trust; and

Rai M. N. Gupta Bahadur, Consulting Officer on Land Acquisition, Government of Bengal.

U. P.—

Mr. Raghubir Saran Dass, Provincial Land Acquisition Officer, Post-war Road Schemes, U. P.

Sind—

Mr. W. B. Calder, I.S.E., Superintending Engineer, Communications Circle, Karachi, and

Mr. I. P. M. Cargill, I.C.S., Revenue Officer, Lloyd Barrage Scheme, Karachi.

Punjab—

Mr. A. C. M. MacLeod, C.I.E., I.C.S., Financial Commissioner, Development, Punjab.

We desire to express our thanks to all the above gentlemen who have so readily placed their experience at our disposal and given us the benefit of their views on the problems we have had to consider.

6. To a close examination of the evidence submitted to us, we have added a study of the various Land Acquisition Manuals of the several Provinces, and the Codes containing the Acts in the several Provinces dealing with Land Acquisition, Encroachments on roads and other Crown lands, Ribbon Development, Town Planning and Improvement Trusts.

We have also studied the reports of the Barlow Commission and of the Scott and Uthwatt Committees appointed in recent years to consider questions similar to those of our terms of reference which have arisen in the United Kingdom, and we have made a special study of the Final Report of the Uthwatt Committee, which has dealt particularly with certain of the questions into which we have been directed to enquire, and of the White Paper on the Control of Land Use, 1944, which contains the decisions of the Coalition Government on the recommendations made in this Report.

7. It may be convenient if we explain here that in our opinion the subjects of our enquiry are all included in List II of the Seventh Schedule of the Government of India Act, 1935, the Provincial Legislative List.

Land Acquisition is item No. 9 of this List.

Road communications are item No. 18 of the List.

The recovery of a share of Betterment or Unearned Increment in Land is included in Taxes on Lands and Buildings, item No. 42 of the List.

It follows that legislation on these subjects should be undertaken by the Provincial Legislatures. We have been referred to Section 103 of the Government of India Act, 1935, but do not consider that this Section can be applied usefully to legislation on any of these subjects in view of the difficulty and time that is likely to be taken in obtaining the consent of all the Provincial Governments and the Chambers of the Provincial Legislatures.

PART I

LAND ACQUISITION

CHAPTER I.—PRINCIPLES OF COMPENSATION FOR ACQUISITION AND PUBLIC CONTROL OF THE USE OF LAND

8. The compulsory acquisition of land in British India is governed by Section 299 of the Government of India Act, 1935, which provides as follows:—

"(1) No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section "land" includes immoveable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking."

9. In para. 32 of their Final Report the Uthwatt Committee set out as follows the general principles underlying payment of compensation for State interference with the use of private property:—

"Ownership of land involves duties to the community as well as rights in the individual owner. It may involve complete surrender of the land to the State or it may involve submission to a limitation of rights of user of the land without surrender of ownership or possession being required. There is a difference in principles between these two types of public interference with the rights of private ownership. Where property is taken over, the intention is to use those rights, and the common law of England does not recognise any right of requisitioning property by the State without liability to pay compensation to the individual for the loss of his property. The basis of compensation rests with the State to prescribe. In the second type of case, where the regulatory power of the State limits the use which an owner may make of his property, but does not deprive him of ownership, whatever rights he may lose are not taken over by the State; they are destroyed on the grounds that their existence is contrary to the national interest. In such circumstances no claim for compensation lies at common law. Cases exist where this common law principle is modified by statute and provision is made for payment of compensation. The justification is usually that without such modification real hardship would be

suffered by the individual whose rights are affected by the restrictions, but there is no right to compensation unless the right is either expressly or impliedly conferred by statute."

After discussing the application of these general principles in legislation in the United Kingdom, they state in para. 35 the following five propositions:—

"(1) Ownership of land does not carry with it an unqualified right of user.

(2) Therefore restrictions based on the duties of neighbourliness may be imposed without involving the conception that the landowner is being deprived of any property or interest.

(3) Therefore such restrictions can be imposed without liability to pay compensation.

(4) But the point may be reached when the restrictions imposed extend beyond the obligations of neighbourliness.

(5) At this stage the restrictions become equivalent to an expropriation of a proprietary right or interest and therefore (it will be claimed) should carry a right to compensation as such."

10. We consider that these principles and propositions are of general application in British India. Certainly the claim of landlords against the State cannot be put higher. No doubt in the United Kingdom the legal position is that there is no such thing as any absolute private ownership of land, and the ultimate ownership of all land vests in the Crown. But we consider that this is equally the position in British India to-day, and that the ultimate ownership of all land vests in the State except perhaps in certain rare cases of unconditional grants made in perpetuity free of land revenue.

11. In spite, however, of the legal position as it exists in the United Kingdom, the landlords have in fact succeeded in achieving a much stronger position in respect of their land than has been achieved by landlords in British India. The only form of land taxation in the United Kingdom, apart from the liability of land for local rates, is the Land Tax. This was settled permanently in 1798 on terms very favourable to the landlords as a perpetual charge on land with provision enabling the landlord to redeem the liability by a capital payment. The Land Tax so fixed remained the only form of direct taxation on land until 1909, when certain other forms of taxation on land were passed by Parliament, in spite of keen opposition by landlords, with the particular purpose of securing for the State a share of unearned increment in land. These taxation proposals proved, however, to be in effect unworkable, and were finally abandoned in 1920.

12. In British India, however, the position is far different. The State has always asserted successfully a claim to a substantial share in the produce of all land This was clearly expressed in Regulation XIX of 1793 by which the Permanent Settlement was created in Bengal. In that Settlement the Government share in the landlords' rental was assumed to be as high as 90 per cent. In the temporarily settled Provinces the Government share is reassessed at intervals, thus securing to the State a share in any unearned increment which may have accrued to the land between settlements. And, if the landlord refuses to accept the settlement, his land reverts to the State.

Thus we consider that, in applying the general principles and propositions set out in para. 9 above, it should be accepted that the claim of landlords in British India is not as high as in the United Kingdom, and that consequently, in applying them, the basis of compensation need not necessarily be similar to that adopted in the United Kingdom.

The Secretary-Member, however, thinks that the quantum of ownership in land in any country has no bearing on the question of the State's inherent right of interference with the use of land without payment of compensation in the

common interests of the community at large; though he agrees that it is not always necessary to apply in British India the principles of, and the claims for, assessment of compensation accepted in the United Kingdom and referred to in proposition (5) mentioned in para. (9) above, as the nature of ownership in land exercised by landlords is different in the two countries.

CHAPTER II.—PROCEDURE

13. The procedure for the compulsory acquisition of land in British India is provided in the Land Acquisition Act I of 1894, an Act of the Central Legislature. Apart from certain important amendments made by the Amendment Act, 1923 (XXXVIII of 1923), only minor amendments have been made by the Central Legislature. The Act has, however, been amended in certain important respects for local application by certain Provincial Legislatures. We have set out the important amendments made by the various Provinces in Appendix II to this Report.

14. The procedure under the Act may be dealt with conveniently under the following heads:—

A. Before publication of a notification under Section 4(1).

B. After publication of a notification under Section 4(1).

C. After publication of a declaration under Section 6 and before making the award.

D. After the award is made.

(i) *A*.

15. As we have already explained in our Interim Report, much of the delay in land acquisition proceedings occurs at the first stage prior to the submission of a notification under Section 4(1) of the Land Acquisition Act. The present practice is generally to require the requiring authority to furnish the Collector with detailed plans of the land required and other particulars, and to obtain from him an estimate of the cost of acquiring the land. The Collector then makes a report to the Provincial Government for issue of a notification.

16. Detailed plans cannot, obviously, be furnished without lawful entry on any land to conduct preliminary investigation and to enable the requiring authority to select the land necessary for acquisition. While the various Land Revenue Codes of the Provinces contain provisions empowering Officers to enter upon and survey land for any purpose of the Code, Section 4(2) is the only authority under which an Officer can lawfully enter upon land to determine what is the actual land necessary for acquisition, and action can only be taken under this sub-section after a notification under Section 4(1) has been published. This notification under Section 4(1) should, therefore, be only in general terms giving such details as may be necessary to identify the area on which the Officer deputed to make a detailed investigation and survey may enter without rendering himself a trespasser.

17. Special importance has been given to the notification under Section 4(1) by the Land Acquisition Amendment Act XXXVIII of 1923. Before this Act, in determining the amount of compensation to be awarded for compulsory acquisition, the market-value of the land at the date of publication of the declaration under Section 6 had to be considered as the basis of compensation. But by the amendment of Section 23(1) *first* made by the Act the date of the publication of the notification under Section 4(1) was substituted.

18. It has been suggested that general power should be given as in the case of the Revenue Department to departmental officers to enter upon lands to reconnoitre and decide generally whether any particular project is feasible. We consider that such powers should be taken, if necessary, in the Departmental Codes, *e.g.*, for a Highway Authority in a Highway Act.

(ii) *B.*

19. Further, Section 5A was added to permit any person interested in any land, which has been notified under Section 4(1), to object within 30 days after the issue of the notification to the acquisition of the land or of any land in the locality. This provision has rendered it necessary that in the notification under Section 4(1) such details as are necessary to enable all persons interested in the land to object should be furnished. But this can rarely be done without survey.

20. As we have explained in paras. 3-5 of our Interim Report, different Provincial Governments have adopted different methods for overcoming the difficulty thus created. All are open to serious objection on one ground or another as we have pointed out. We consider, therefore, that the proper method to adopt in order to overcome this difficulty created by the insertion of Section 5A is to make express provision in the Act for the issue of a second notification after the survey under Section 4(2) is carried out giving necessary details to enable all persons interested to object within 30 days after the publication of this second notification. At the same time the date of publication of the notification under Section 4(1) should remain the date on which the market value is to be determined as a basis for calculating the compensation to be awarded. The purpose may be achieved by the following amendments:—

Section 5 may be renumbered Section 4(3), since it is connected with Section 4(2).

For the existing Section 5 may be substituted:—

> "When the Provincial Government is satisfied, after considering the result of the survey, if any, made under Section 4(2), or, if no survey is necessary, at any time, that any particular land notified under Section 4(1) is needed for a public purpose, or for a Company, a notification to that effect shall be published in the official Gazette stating the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area and situation, and, where a plan has been made of the land, the place where such land may be inspected, and the Collector shall cause public notice to be given of the substance of the notification at convenient places on or near the land to be taken."

In Section 5A(1) for the words

"notified under Section 4, sub-section (1)"

should be substituted

"notified under Section 5."

21. Section 17(4) provides that in certain circumstances the Provincial Government may direct that the provisions of Section 5A shall not apply. We consider it more appropriate that this provision should be made in Section 5A itself as sub-section (4). We suggest, therefore, the addition of the following sub-section 5A(4):—

> "In cases of urgency, the Provincial Government may direct that the provisions of Section 5A shall not apply to any waste or arable land needed for any public purpose or for a Company. In such a case no notification under Section 5 shall be required, and a declaration may be made under Section 6 as hereinafter provided in respect of the land at any time after the publication of the notification under Section 4, sub-section (1)."

22. If this recommendation is adopted, then the normal procedure should be for the provincial Government to issue a notification under Section 4(1) in general terms as soon as administrative sanction is given for a project for which the

compulsory acquisition of land will be necessary, or even earlier as soon as it is decided that it is desirable that such a project should be investigated. No reference to the Collector should be necessary before a notification is issued, but the departmental authority should obtain issue of the notification from the Provincial Government direct. It should then proceed to make the necessary survey and investigation under Section 4(2), and thereafter should furnish the Collector with a detailed plan indicating the land selected for acquisition, and request him to move the Provincial Government for issue of a notification under Section 5. At this stage the Collector should furnish the Government with any report, which may be considered necessary, regarding the presence of any religious buildings, tombs or graveyards on the land selected for acquisition and regarding any objections that he may perceive to the acquisition of the land proposed. He may at the same time, if necessary, be required to furnish the departmental authority with a preliminary estimate of the cost of acquisition.

23. The advantages will be that survey and investigation will follow the issue of a notification under Section 4(1), and not precede it as is the present practice generally. Thus it will be practicable to prevent the intention of the Government to acquire land from becoming public before issue of a notification under Section 4(1), when the market value for the purposes of assessing compensation will be pegged to the date of this notification The danger of speculative and artificial transactions designed to inflate the market value of the land to be acquired will thus be minimised.

Further the present difficulties and delay caused by requiring the Collector to furnish an estimate of the cost of acquisition before there has been any definite decision as to what exactly is the land to be acquired will be avoided. The Collector should not be required to furnish any estimate until survey and investigation under Section 4(2) have taken place where this is necessary. It will also be unnecessary to serve individual notices on the persons interested, as is required by the Executive Instructions of certain Provinces. Such individual service is not required by Section 4(1). But apparently the Executive Instructions have been issued, since it has been recognised that the notification under Section 4(1) may be in such general terms that the persons entitled to object under Section 5A may not have sufficient information from the notification published of the land which may actually be acquired.

We consider that, when survey takes place under Section 4(2), this will in itself serve as notice to the persons interested that their land is likely to be acquired. Thus there will be sufficient confirmation of the fact by subsequent publication of a notification to acquire under the Section 5 which we propose. We do not propose that there should be service of individual notices under the Section, but consider that it will be sufficient for the Collector to make public notification at convenient places on or near the land to be taken. The valid objections, which can be taken under Section 5A, are very limited. Indeed we have been informed that it is comparatively rare for an objection under the Section to be upheld.

24. In cases in which the area to be acquired is small and so easily defined that no survey is necessary, then a notification under Section 5 may be issued at the same time as a notification under Section 4(1) or as soon after as details necessary to indicate the situation of the land to be acquired are available.

25. We suggest that all notifications under the Land Acquisition Act for the acquisition of land for Post-War Reconstruction Schemes should be published in special Gazette Supplements, headed "Post-war—Land Acquisition for Roads etc."—and not in the usual weekly Provincial Government Gazette.

(iii) *C.*

26. Section 6 empowers the Provincial Government, after considering the report, if any, made under Section 5A, sub-section (2), to make a declaration when it is satisfied that any particular land is needed for a public purpose. The declaration is to be published in the official Gazette, and shall state a description of the land in some detail.

It frequently happens that the land, which it is decided to acquire after considering the result of the survey and investigation made under Section 4(2) and the enquiry conducted under Section 5A, is less than the area originally notified under Section 4(1). The Act contains no express provision as to the effect of the notification under Section 4(1) on this excess land when a declaration is made under Section 6 of the lesser area to be acquired. It has been held, however, in rulings of the Calcutta High Court that Section 6 contemplates only one declaration in respect of land notified under Section 4(1). Thus the inference is that this notification lapses automatically in respect of any excess area notified. The Executive Instructions of the Governments of Bihar, Bengal and Bombay provide for issue of a notification cancelling the original notification under Section 4(1) in respect of the excess area.

27. We think that express provision should be made in the Act that, when a declaration is made under Section 6, in respect of less land than was originally notified, the previous notification under Section 4(1) should be expressly cancelled in respect of this excess land. This appears to us particularly important in view of the effect of a notification under Section 4(1) in pegging the market value for the purpose of assessing compensation.

The purpose may be served by adding the following sub-section to Section 6 as sub-section (4):—

> "When the area, in respect of which the said declaration is made, is less than the area previously notified under Section 4(1), it shall at the same time be notified that such previous notification of the excess area is cancelled."

(iv) *Section 7*

28 Section 7 provides that, whenever a declaration has been made under Section 6, the Provincial Government shall direct the Collector to take order for the acquisition of the land subject of the declaration. The expression "Collector" is defined in Section 3(c) as meaning "the Collector of a District, and includes a Deputy Commissioner and any officer especially appointed by the Provincial Government to perform the functions of a Collector under this Act."

We have found general agreement that it is generally impracticable for the Collector of the District to find the time to conduct land acquisition proceedings himself, and the usual practice is to empower another officer of the district staff to perform the functions of the Collector for the purpose. It has also been generally agreed that special officers with special staff will be required to undertake the large amount of land acquisition contemplated in connection with the proposed Post-war Reconstruction Schemes. We consider that the definition of "Collector" makes it clear that Provincial Governments have full power to appoint the necessary special staff to perform the functions of the Collector under the Act, and that there is no necessity for any amendment of the Act for the purpose as was suggested to us originally. We have already in para. 15 of our Interim Report emphasised the importance of taking early steps to secure that a sufficient number of officers with the requisite experience and training in land acquisition work are available to take up the work when this becomes necessary.

29. In accordance with Section 5A(2), after enquiry has been made into any objections made under the Section, a report is to be submitted to the Provincial Government by the Collector with the record of the proceedings held by him. When the Provincial Government has under Section 3(c) appointed an Officer other than the District Collector especially to perform the functions of the Collector under the Act, this report is to be submitted by him. It has been suggested to us, however, that, since the District Collector is the administrative head of the District, it is desirable on administrative grounds that the report should be submitted through him so that he may be in a position to make any comments that he may think fit on the recommendations of the Special Officer. We consider that this is an administrative matter which may be regulated, if necessary, by a rule made under Section 55 of the Act.

30. It has been held that, in conducting proceedings for the acquisition of land, the Collector does not function judicially. He functions as an executive officer of the Government entrusted with plenary powers to act as agent on behalf of the Government to make an offer to the persons interested in the land to be acquired for its acquisition. The Act does not provide for any control by the Government or any other authority superior to the Collector of his actions in pursuance of the direction made to him under Section 7, nor for any appeal by the Provincial Government against, or application by the Provincial Government for the revision of, the final award made by him.

31. It has been suggested to us that it is not desirable that the Collector should be empowered to function singly, and that it will be more appropriate to empower Provincial Governments to constitute Assessment Tribunals to perform the functions of the Collector under the Act.

We have found practically no support for this proposal, nor do we ourselves support it. Land acquired under the Land Acquisition Act is generally agricultural land. For the proper assessment of the compensation, which should be paid for its acquisition, practical experience of revenue administration is required. This experience the Collector possesses as the principal Revenue Officer of the district. Officers especially appointed to perform his functions under the Act are other experienced Revenue Officers of the district staff. We do not consider that any Assessment Tribunal could be constituted more competent to assess compensation for the acquisition of agricultural land than an experienced Revenue Officer with local experience of the district in which the land is situated.

When land in urban areas, however, has to be acquired, the revenue experience of the Collector or other Revenue Officer may not be adequate for the purpose. In such cases we think that, when a Provincial Government maintains a special staff for Town Planning and Valuation under a qualified Consulting Surveyor, as is the case in Bombay, the services of a surveyor of the staff may with advantage be placed at the disposal of the Collector to assist him in assessing the compensation to be awarded. We understand that this is done in Bombay. But we consider that such assistance is only necessary in the case of acquisition of land in urban areas.

(v) *Sections* 11—15

32. These Sections provide for the enquiry to be conducted by the Collector for the assessment of compensation and his final award. Regarding these we wish to lay emphasis on two points:—

33. The first is the necessity for the Collector to maintain a careful and detailed record of the enquiry conducted by him. In any land acquisition case, it may eventually become necessary to make a reference to the Civil Court under Section 18, if any of the persons interested asks for such a reference. The view which a Civil Court or the Appellate Court will take must inevitably be influenced by the method adopted by the Collector in the conduct of his enquiry and his

handling of the evidence. It is, therefore, essential, in order that the interests of the Government may not suffer, that the record of every land acquisition case should contain an order sheet which should be maintained by the Collector in his own hand in which should be described shortly but clearly what the Collector has done at each stage at each hearing. All Land Acquisition Manuals should contain clear instructions to this effect emphasising the importance of the careful and proper maintenance of the record. We commend particularly the Executive Instructions to this effect included in the Manuals of the Madras and Bombay Governments.

34. The second is the desirability that the departmental authority, at whose instance land is being acquired, should be given an opportunity of being represented during the enquiry and leading evidence and giving assistance in the assessment of compensation.

Section 50(2) provides for this in the case of acquisition on behalf of a local authority or a Company, but does not provide for any representation on behalf of a department of the Government. Some Provincial Governments have, however, issued Executive Instructions that notice should always be given to the requiring authority of the date fixed for the enquiry under Section 11, so that this authority may be represented at the enquiry if it so desires. We recommend that such instructions should be issued by all Provincial Governments, and that Collectors should be directed to accept the assistance of any departmental officer deputed to attend the enquiry and consider any evidence tendered by him in connection with the assessment of compensation.

We also recommend that the Executive Instructions should require that the Collector should inform the requiring authority of the award which he proposes to give, furnishing details, before actually announcing his final award. This will enable the requiring authority to decide whether or not a recommendation should be made to the Government to withdraw from the proceedings under Section 48 in view of the amount of the award.

(vi) *D.*

35. Section 12(1) provides that an award made by the Collector under Section 11 shall be final and conclusive, except as provided in Part III. There is no provision empowering the Collector to correct an award subsequently on account of any arithmetical or clerical mistake which may subsequently be detected. This omission has at times caused difficulty. We see no reason why mistakes found in awards made under Section 11(1) should not be rectified on the analogy of the powers given by Section 152 of the Civil Procedure Code. We, therefore, recommend that a provision on the lines of this section be incorporated in the Land Acquisition Act as Section 12A. It may run as follows:—

> "Clerical or arithmetical mistakes in the award arising therein from any accidental slip or omission may, at any time, be corrected by the Collector either on his motion or on the application of the parties."

(vii)

36. Section 17 contains special provisions for obtaining possession of land before an award has been made by the Collector under Sectioon 11.

37. Section 17(1) empowers the Provincial Government in cases of urgency to direct the Collector to take possession of any waste or arable land on the expiration of 15 days from the publication of the notice which follows the declaration under Section 6. In para. 14 of our Interim Report we considered the desirability of extending the scope of this sub-section to any land instead of confining it to any waste or arable land as at present. We set out the objections to this proposal. Our final conclusion is that it is neither necessary nor desirable to extend the scope of the sub-section.

38. We were, however, informed in the United Provinces that the utility of the sub-section has been greatly reduced in this Province by an order of the Provincial Government which requires that the Collector, when reporting a request of the requiring authority that the sub-section should be applied, must certify that the land, in respect of which it is proposed to apply it, is waste or arable land. We were informed that considerable delay takes place in obtaining this certificate.

We consider that such a certificate is quite unnecessary. If the Provincial Government is satisfied that the case is one of urgency justifying the employment of the sub-section, it should be sufficient that, when making the declaration under Section 6, it directs the Collector at the same time under Section 17(1) to take possession of any waste or arable land included in the land subject of the declaration. It should then be for the Collector to determine what land is waste or arable land at the time of taking possession. To require that he should ascertain this before any direction is made under Section 17(1) appears to us quite unnecessary.

39. In Bombay we found some support for the suggestion that land is not waste or arable land if there are scattered trees or a few huts or a well standing on it. We consider that this is an incorrect interpretation of the terms. But to make it quite clear what is intended by the expressions in the sub-section it may be desirable to add the following Explanation to it:—

"*Explanation.*—The presence of a few stray trees or huts does not operate to make such lands other than waste or arable."

40. Section 17(2) authorises the Provincial Government to take possession of any land on behalf of a Railway Administration immediately after publication of the notice following a declaration under Section 6, when immediate possession is necessary for the maintenance of railway traffic and other specified purposes owing to any sudden change in the channel of any navigable river or other unforeseen emergency.

It has been suggested to us that it may be desirable in similar circumstances to take immediate possession for purposes of road construction or maintenance, and that the scope of the sub-section should be enlarged accordingly. We have found general support for this suggestion, and we consider it reasonable. We propose, therefore, an amendment of the sub-section on the following lines:—

After the words "or of providing convenient connection with or access to any such station,"

insert

"or whenever owing to a like emergency it becomes necessary for the Provincial Government to acquire the immediate possession of any land for the purpose of maintaining traffic over a public road, the Collector may etc."

41. In para. 21 above, we have proposed that for Section 17(4) should be substituted a new sub-section (4) to Section 5A. If our suggestion for an Explanation of the expressions "waste land" and "arable land" is accepted, then the Explanation should be included also in this new sub-section (4) to Section 5A.

CHAPTER III.—Assessment of Compensation

42. The basis on which compensation is to be awarded for the compulsory acquisition of land is set out in Sections 23 and 24 of the Land Acquisition Act. Section 23 details the matters to be considered in determining compensation, while Section 24 details the matters to be neglected in doing so. They follow

the principles recognised in English law at the time when the Act was passed in 1894, for compensation for the compulsory acquisition of land. While the Sections are framed primarily for the guidance of the Court to which a reference is made under Section 18, Section 15 provides that, in framing his award, the Collector shall be guided by the provisions contained in the Sections.

(i) *Section* 23 (1) *clause first.*

43. Section 23 (1) contains six clauses. Of these the first is the most important. It provides that the Court shall take into consideration the market value of the land at the date of the publication of the notification under Section 4 (1).

The term "market value" has not been defined in the Act. But by judicial interpretation it has been held to be "the price that an owner willing, but not obliged to sell, might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land."

Assessment of compensation on the acquisition of land is now governed in the United Kingdom by the Acquisition of Land (Assessment of Compensation) Act, 1919, in which the rules for assessing compensation are tabulated in Section 2. Rule (2) of these rules provides as follows:—

> "The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: Provided always that the arbitrator shall be entitled to consider all returns and assessment of capital value for taxation made or acquiesced in by the claimant."

It was suggested to the Uthwatt Committee that the Rule is defective since it does not import a "willing buyer" or "the normal condition of an open market". The Committee considered this criticism to be unfounded, since in their opinion both conditions are implied in the Rule. It was also suggested to them that the Rule should provide that no account should be taken of possible developments, unless the arbitrator is satisfied that the developments are immediately possible and that there is a demand for such developments. The further suggestion was made that, in assessing compensation, regard should be paid only to the use to which the land was being put at the date of notice to treat. The Committee rejected both these suggestions on the ground that, "As matters stand an arbitrator takes all possibilities into account, but he is bound to take a businesslike point of view of the situation." They concluded that there was no reason for altering the Rule.

44. This clause of Section 23 was contained in the Land Acquisition Act, 1870, which was repealed by the present Act of 1894. In a leading case under the Act of 1870, Premchand Burral *v.* Collector of Calcutta, 2 Cal. 103, it was held that the market value should not be determined merely on a consideration of the present disposition of the property, but that it should be held to include the price that the landlord might expect to obtain by employment of the land in the most lucrative and advantageous manner. This principle has been followed in cases under the present Act of 1894, and it has been held that it is not proper to determine market value with reference only to the purpose to which the land was put at the time of acquisition, but that future and more lucrative purposes to which the land might be put must be taken into consideration, regard being paid in particular to the "special adaptability" of the land for a more lucrative purpose. In other words market value has been held to include, not merely present value in accordance with the present use, but also potential value in accordance with any future use to which the land might be put. In a Full Bench ruling, Secretary of State *v.* Makhan Das, A.I.R. 1928, Allahabad 147, the Allahabad High Court explained that the law provides:—

"That the fairest and most favourable principle of compensation to owners is to estimate the market value of the property, not according to its present disposition, but as laid out in the most lucrative and advantageous way in which the owners could dispose of it..... In assessing compensation the probable use to which the land might be put is necessarily an element to be taken into consideration so that, for example, land which may probably be used for building purposes cannot be valued on the same basis as merely agricultural land. Potential value, *e.g.*, suitability for any particular purpose, should be taken into account in determining market value."

They applied the statement of the law as laid down by the House of Lords in Fraser *vs.* City of Fraseryille thus:—

"The seller is entitled to the value to him of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to carrying out of the scheme for the purpose for which the property is compulsorily acquired."

They observed that their Lordships of the Privy Council had approved the application of this statement of the law to the administration of the Land Acquisition Act in India.

45. Of the approved methods for determining market value the two most generally approved for the Court and the Collector are:—

(1) Consideration of the sale deeds of transfer of similar lands in the locality in recent years, and

(2) Calculation of the value at a number of years' purchase of the estimated profits derived from the land to be acquired.

We have examined the Land Acquisition Manuals of the Provinces which we have visited, and have found that, with the exception of the Punjab, the Manuals contain detailed instructions for the guidance of the Collector in applying the methods to the particular land tenures of the Province. The Punjab Manual contains the Standing Orders of the Financial Commissioner. We consider that these Orders might well be amplified by more detailed explanation of both the principles of land acquisition and the operation of the approved methods for determining market value. Land acquisition is a highly technical matter, regarding which careful and detailed instructions are necessary for the Officers who deal with it.

46. When land to be acquired is definitely either agricultural land or land occupied by buildings, and there is no claim that it can be applied more lucratively to any other purpose, there is little practical difficulty in ascertaining its market value. But owing to the judicial interpretation of potential value, which we have discussed in para. 44 above, difficulty arises when claims are advanced to such value. The difficulty is not so great when there are sale deeds available in proof that land in similar use to the land to be acquired has actually been sold in the past for a more lucrative purpose. The existence of an actual market for land for a more lucrative purpose is thus established. But the judicial interpretation in some cases had not been restricted to such a market thus proved to be actually in existence. It extends to an "imaginary market" which might be created for the land to be acquired owing to its "special adaptability".

We apprehend that claims to potential value will be numerous when it is sought to acquire land, which is at present agricultural land, for the purpose of developing and improving arterial highways leading from principal towns

and for constructing bypasses to bypass towns and important villages. We understand that such proposals are an essential feature of the proposed schemes for the improvement of roads, and we apprehend that the cost of the schemes may be enhanced unreasonably by claims for potential value which are likely to be upheld in view of the considerations discussed in para. 44. The effect of the improvements proposed will no doubt be to give to the land on the side of the roads improved and the bypasses a potential value for building purposes which it does not already possess. It appears to us that, as the law stands, claims to compensation for such potential value are likely to be upheld, even though there may be no evidence that agricultural land similarly situated to the land to be acquired has actually been already bought and sold for building purposes.

47. Attempts have been made in certain Provinces to restrict the application of the principles explained in para. 44 to claims to compensation for potential value.

In Clause (c) of Section 557 of the Calcutta Municipal Act III of 1899, the following was substituted for the first Clause of Section 23 (1):—

> "The market value of the land according to the disposition of the land at the date of the declaration relating thereto."

A similar modification of the Clause was included in Article 9(5) (a) of the Schedule to the Calcutta Improvement Act of 1911, and in the Calcutta Municipal Act of 1923.

The effect of this change in the law was considered by the Calcutta High Court in Harishchander *v.* Neogi (1903) 11 C.W.N. 825, and it was held that it "precluded any valuation based on the most advantageous disposition of land, *e.g.* a valuation of Bustee land on the supposition of the adaptability of the land to build to carry expensive structures, which is the advantageous use to which land can be put in Calcutta."

A similar view was taken later in Manindra Chandra Nandi *v.* Secretary of State (1914) 41 Cal. 967, and it was held that, for the purpose of valuing Bustee lands which were to be acquired, evidence of sales of other lands in the neighbourhood which were not Bustee lands was inadmissible. But later in 1925 in Madan Mohan Burman *v.* Secretary of State, A.I.R. 1925 Cal. 481, it was held by the Calcutta High Court that in the valuation of Bustee land it was wrong to exclude evidence of sale of a piece of land in the neighbourhood in which there was a Pucca building. Later in 1930, in Hindustan Co-operative Insurance Society *v.* Secretary of State, A.I.R. 1930, Cal. 230, evidence of an intention to employ land lying vacant at the material date for building purposes was held to be admissible. Thus in these last two rulings an element of potential value was allowed in determining the market value.

We enquired at Calcutta what was the practical effect of this amendment of the law, and received different views. According to one view the effect has been to restrict the grant of compensation for potential value to compensation for such potential value as may be regarded as reasonable and immediately probable, and to exclude compensation for potential value based on speculative and imaginary possibilities. According to another view the amendment has had no practical effect.

48. In Clause 10 (3) of the Schedule to the U. P. Town Improvement Act, 1919, the following clauses have been added for the purposes of the first clause of Section 23 (1):—

> "(a) The market value of the land shall be the market value according to the use to which the land was put at the date with reference to which the market value is to be determined under that clause;

(b) If it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him."

These amendments of the clause have been extended to the Province of Delhi, and similar amendments have been made in clause 10 (3) of the Schedule to the Punjab Town Improvement Act, 1922, and clause 10 (3) of the Schedule to the Nagpur Improvement Trust Act, 1936.

The effect of these amendments was considered by the Allahabad High Court in the Full Bench ruling Secretary of State *vs.* Makhan Das, to which we have referred in para. 44 above. It was held that the effect was to exclude altogether any compensation on account of potential value. The value of the land to be acquired must be calculated solely on the basis of capitalisation of the profits actually derived from the use of the land to which it was put at the material date. Evidence of any sales of similar land in similar use must be excluded, since the element of potential value was likely to have entered into the sale price paid. The High Court considered that the effect of the amendments might, therefore, be to cause much possible hardship to landlords, since it was quite possible that the land to be acquired might be lying vacant on the material date and the landlord thus be deriving no profit from it. In such circumstances he would be entitled to no compensation, a result which the High Court thought could not have been intended by the Legislature. None-the-less the amendments have remained in the U. P. Act unaltered, and have only recently been introduced into clause 10 (3) of the Schedule to the Cawnpore Urban Area Development Act, 1945.

A somewhat different view has, however, been taken by a single judge of the Lahore High Court in 1942, in Governor-General for India in Council *vs.* Haji Mahommed Siddique. He upheld the action of the Assessors of the Delhi Improvement Trust Tribunal in admitting in evidence sale deeds showing the prices paid for land similar to the plot to be acquired. He observed, however, that there was no evidence that the prices actually paid included any element of potential value.

The Assessment Tribunal constituted for the Lahore Improvement Trust has taken a similar view, and held that the retention of the word "market value" in the amended Section 23 (1) indicates that evidence of prices actually paid in the market for land in similar use is admissible.

49. We enquired in the United Provinces what has been the practical effect of the amendments included in the U. P. Town Improvement Act, 1919. It appears that Clause (a) has not been applied in the rigid manner in which the Allahabad High Court suggested that it might be applied, and that, when land lying vacant is acquired for an Improvement Trust, compensation is paid on an estimate of the value to the landlord of the land in its present use. In Cawnpore there is a considerable amount of Government Nazul which is Crown land. When vacant land, other than Nazul, has been acquired for the Cawnpore Improvement Trust, compensation has been awarded on the basis of the rates approved by the Provincial Government for the disposal of Nazul land similarly situated.

50. It has been suggested to us that the amendments should be applied generally in substitution for the first clause of Section 23 (1). As we have mentioned, a similar suggestion was made to the Uthwatt Committee, but rejected by it.

We are not concerned with the terms on which it is reasonable that Town Improvement Trust should be permitted to acquire land, though it does appear to us anomalous that in the same town there should be two different rates of

compensation for land to be acquired for public purposes; one when it is acquired for the Improvement Trust, and another more favourable to the landlord when it is acquired for some other public purpose. If it were necessary to adopt the interpretation of the effect of the amendments adopted by the Allahabad High Court we should consider that the effect of their adoption for all purposes of acquisition of land might cause hardship to landlords. At the same time we do think that it is necessary to impose some restriction on the liberal interpretation of potential value resulting from the rulings discussed in para. 44.

The judicial interpretation of potential value appears to be based on the English law as it stood before 1919. This is one of those cases, which we have mentioned in para. 12 of Chapter I, in which we think that the practical application of the principles of the English Law should not be applied in British India. In the United Kingdom there has been in steady progress a process of conversion of agricultural land to industrial and residential purposes ever since the Industrial Revolution of the 18th century. Thus a high proportion of agricultural land possesses a development value. This is by no means the case in British India, in which the development of agricultural land for other purposes is still in its infancy and most land is still in use for agricultural purposes possessing no development value.

51. It appears to us that the aim to be achieved in respect of compensation for potential value is to restrict such compensation only to a potential value proved by the evidence of sale transactions in an actual market to have come already into existence. The existence of an actual market before the material date must be established. We accept the view of the effect of the amendments which has been taken by a single judge of the Lahore High Court and the Assessment Tribunal constituted for the Lahore Improvement Trust. When land is acquired compulsorily the aim should be to compensate the landlord for loss sustained by him by being deprived of a value, which he could have secured had he placed the land in a market actually existing at the time. But the landlord should not be permitted to derive profit from the acquisition by being paid compensation for a possible use to which the land might be put in the future in an imaginary market, when neither he has made any attempt to obtain such a value by placing his land on the market, nor any other landlord has obtained such a value in the market for land similarly situated and in similar use. Thus compensation should be paid for a more lucrative use, to which the land to be acquired might be put than that to which it is put at the material date, when it is established that land similarly situated and in similar use has in fact previously been applied to a more lucrative purpose and sold for such a purpose. Compensation should not be paid on a consideration of an imaginary market in which the land to be acquired might be sold for a possible future use, when it is not established that such a market has in fact existed before the material date and land similarly situated been sold for such a use.

To take the concrete case of the acquisition of agricultural land for the purpose of developing and improving arterial highways leading from principal towns and for constructing bypasses: If it is established that before the material date similar agricultural land similarly situated has in fact been sold in the market for building purposes, then we consider that it will be reasonable to pay compensation for the agricultural land to be acquired on the basis that it possesses potential value for building purposes. But, when there is no evidence that similar agricultural land has in the past been sold for building purposes or that before the material date there has been any market for the sale of similar land for such purposes, then it seems to us unreasonable to pay compensation for the land to be acquired on the ground that it might be used

for building purposes. Its potential value for building purposes will in fact be due to the improvement to the highway for which it is to be acquired.

We think that the purpose may be achieved by adopting for general purposes the amendments made in the Schedule to the U. P. Town Improvement Act, 1919, but adding to clause (a) a clause on some such lines as this:—

> "For the purpose of determining the market value the court shall take into consideration transfers of land similarly situated and in similar use, and shall not admit evidence that any price actually paid for similar land in similar use contains any element of the potential value of the land transferred for any more lucrative use."

52. In para. 45 we have emphasised the importance of issuing clear and careful instructions for the guidance of Land Acquisition Officers. We consider that instructions are very necessary to explain the principles on which compensation may be awarded for potential value and the methods by which it is to be calculated. Collectors cannot be expected to acquaint themselves with the various rulings of the Privy Council and the High Courts without some guidance from Government as to how to find them. The Land Acquisition Manuals issued by the Governments of Madras and Bombay contain very clear and useful instructions regarding the determination of potential value. The Manuals issued by the Governments of Bihar and Bengal, on the other hand, though in other respects excellent, are altogether silent regarding this important matter. The Manual of the United Provinces deals briefly with it in a single paragraph. We referred this paragraph to an experienced Land Acquisition Officer, who appeared before us, and he informed us that actually he had never attempted to apply it. In Manuals, in which there are no clear instructions as to the determination of compensation for potential value, we recommend that the omission be made good.

53. Clause 9 of the Schedule to the Calcutta Improvement Act, 1911, contains the following further additions to the first clause of Section 23, which we regard as very useful additions and which we think should be adopted generally:—

> "(d) If the market value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market value shall be deemed to be the market value of the land if put to ordinary uses; and
>
> (e) If the market value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded, and the market value shall be deemed to be the market value of the building if occupied by such number of persons only as can be accommodated in it without risk or danger from overcrowding."

Similar amendments have been included in the U. P., Punjab and Nagpur Improvement Trust Acts. The amendments made in clauses (d) and (e) correspond to Rule (4) of the Rules under Section 2 of the United Kingdom Acquisition of Land (Assessment of Compensation) Act, 1919.

These clauses are particularly applicable when it is necessary to acquire land for the purpose of slum clearance. It has been suggested to us that their practical application has proved difficult owing to the difficulty of satisfying a court or the Collector that land is being used in a manner contrary to public policy or that buildings are so overcrowded as to be dangerous to the health of the inmates. If this is so, then it might be suitable to take power

for the Provincial Government to prescribe by rules for the purpose of these clauses what shall be considered to be the use of land contrary to public policy or the overcrowding of buildings.

54. Clause 10 of the Schedule to the U. P. Town Improvement Act, 1919, adds further the following useful clause (g):—

> "When the owner of the land or building has after the passing of the United Provinces Town Improvement Act, 1919, and within two years preceding the date with reference to which the market value is to be determined, made a return under Section 158 of the United Provinces Municipalities Act, 1916, of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent in the latest return so made, save as the court may otherwise direct, and the market value may be determined on the basis of such rent;
>
> Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement."

A similar provision has been made in the Schedules to the Punjab Town Improvement Act and the Nagpur Improvement Trust Act. We recommend this provision also for general adoption.

(ii) *Section* 23 (1), *Clauses secondly to sixthly.*

55. We have no recommendations to make regarding these clauses.

(iii) *Section* 23 (2)

56. This sub-section provides that, in addition to the market value of the land, the court shall in every case award a sum of 15 per centum on such market value, in consideration of the compulsory nature of the acquisition. The purpose appears to be to reimburse the landlord for such miscellaneous expenditure, which he may incur as a consequence of the land acquisition proceedings, which cannot be more precisely defined. Similar payment was originally made in cases of compulsory acquisition in the United Kingdom, but we understand that this is no longer the case. The City of Bombay Municipal Act, which contains provisions for the acquisition of land for the Improvement Trust Committee of the Bombay Corporation, has substituted a scale of compensation on account of compulsory acquisition graduated in accordance with the amount of the award. Restrictions on the payment of such compensation have been introduced in the U. P. Town Improvement Act and the Nagpur Improvement Trust Act, while the Punjab Town Improvement Act provides that no additional compensation shall be payable on account of compulsory acquisition.

It has been suggested to us that, when provision has been made in Section 23 (1) for payment of full compensation to the landlord for the loss sustained by him on account of acquisition of his land, it is unreasonable that he should be paid anything further in addition. Consequently sub-section (2) of Section 23 should be deleted as in the Punjab Town Improvement Act.

The balance of opinion, which we have received on this proposal, is, however, in favour of retaining the sub-section as it is. And our conclusion is that it should be retained. When land is acquired in rural areas, there is no doubt that the landlord is put to certain expense on account of attendance before the Land Acquisition Officer at Headquarters and to other loss, the extent of which cannot be accurately assessed. Thus we consider the provision made in

the sub-section fair. In the case of cities, in which an Improvement Trust is in operation, the position is different, for the land acquisition proceedings will ordinarily be conducted in the city itself.

(iv) *Section 24 (fifthly)*

57. This clause provides some restriction on the compensation which may be awarded for potential value on account of the special suitability or adaptability of the land to be acquired. Rule (3) of the Rules under Section 2 of the United Kingdom Acquisition of Land (Assessment of Compensation) Act, 1919, imposes the following similar restriction:—

> "The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority; Provided that any *bona fide* offer for the purchase of the land made before the passing of this Act which may be brought to the notice of the arbitrator shall be taken into consideration."

The Uthwatt Committee considered this Rule, and concluded that it does not go far enough. They recommended, therefore, that it be recast as follows:—

> "The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers; and no account shall be taken of any increased value or element of value arising from the actual or possible demands for the land or other land by any Government Department, local or public authority, or any statutory undertaker; or arising from the existence of or proposals for, or the probability or possibility of the land or other land becoming subject to, any public scheme of development, redevelopment or reconstruction (including schemes of preservation from development) or from any works done or to be done or any change of user under any such scheme."

If the recommendation, which we have made in para. 51 for the general adoption of Clauses (a) and (b) of Clause 10 (3) of the Schedule to the U. P. Town Improvement Act, 1919, in the first clause of Section 23 (1), is accepted, then there will be no necessity for any amendment of Section 24, *fifthly*. But, if the recommendation is not accepted, then we consider that this clause should be amended on the lines recommended by the Uthwatt Committee.

The Chairman also recommends that the clause should be amended so as to exclude payment of compensation for value which could be obtained by putting the land to a use which is prevented by a municipal bye-law or other statutory restriction. At Lahore we were informed that there is a proposal to acquire land lying vacant in front of buildings on either side of The Mall in order to improve the land for the passage of the public. It appears that the Lahore Municipal Board has in the exercise of its statutory powers imposed a building line on either side of The Mall in front of which building is not permitted. The land to be acquired is land on which building cannot take place in view of the imposition of this building line. It is apprehended, however, that, when the land is acquired, compensation will be claimed and awarded valuing it as land with potential value for building purposes. This apprehension is based on a High Court ruling that a Municipal Board is not entitled to impose a restriction on the use of land which will diminish its value for the purpose of awarding compensation on compulsory acquisition. It appears to

the Chairman unreasonable that, when a Municipal Board or other authority has statutory power to prevent land from being used for any particular purpose, compensation should be awarded for compulsory acquisition of such land on the basis that it has a potential value for a use which is in fact prohibited. He thinks, therefore, that this clause should be amended so as to make it clear that compensation is not payable for such use. The other Members do not agree. They rely on Section 15 of The Restriction of the Ribbon Development Act, (United Kingdom) 1935, in support of their view.

(v) *Section 24 (sixthly)*

58. This clause prevents any set-off against the compensation to be awarded of any betterment value likely to accrue from the purpose for which the land is being acquired to other land of the landlord. Such set-off is not permitted by the Rules under Section 2 of the United Kingdom Acquisition of Land (Assessment of Compensation) Act, 1919, though provision for it is made in certain General and Special Acts in force in the United Kingdom. Similarly Sections 301 (1) and 354 T (1) of the City of Bombay Municipal Act provide that:—

> "The Court shall take into consideration any increase to the value of any other land or building belonging to the person interested likely to accrue from the acquisition of the land after the acquisition, alteration or demolition of the building."

Such provisions for set-off are in effect a method of recovering betterment value. We shall deal with them, therefore, more fully in discussing betterment value.

(vi) *Section 24 (other clauses)*

59. We have no recommendation to make regarding the other clauses of this Section.

(vii) *Section 24-A*

60. Clause 12 of the Schedule to the U. P. Town Improvement Act, 1919, adds a Section 24-A, of which we wish to draw attention to the following two sub-sections:—

> "(2) If, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting the building into such condition or state:
>
> (3) If, in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building, minus the cost of demolishing the building."

Similar additions to the Land Acquisition Act have been made in the Schedules to the Punjab Town Improvement Act and the Nagpur Improvement Trust Act, and in Section 354 T (5) and (6) of the City of Bombay Municipal Act.

These additions are complementary to the additions to the first clause of Section 23 (1) which we have recommended for general adoption in para. 53. We recommend that they be also adopted for general application.

(viii) *Section* 31 (3) *and* (4)

61. Section 31 (3) permits the Collector, instead of awarding a money compensation in respect of any land to a person having a limited interest in such land, to make an arrangement with the person either by the grant of other lands in exchange, remission of land revenue on other lands held under the same title, or in such other way as may be equitable. The reason for this is that the title of the person with a limited interest to transfer may be doubtful.

It has been suggested to us that the clause should not be restricted to persons having a limited interest, but made of general application to all persons interested in land to be acquired. In other words such persons may be compelled to accept compensation otherwise than in cash, preferably by grant of other land in exchange.

We have not found any general approval of this suggestion and we do not ourselves approve of it. The practical difficulty is that it will only be in rare cases that the Collector will have at his disposal other land suitable for exchange. If there is such land and the persons interested are willing to take it in lieu of cash, then Section 31 (4) permits such an arrangement. Chapter XXIV of the Executive Instructions of the Madras Government appears, however, to discourage any such arrangement. If land of similar quality and advantages to the land to be acquired is available, then we see no reason why the Collector should not make an arrangement by which it is exchanged for land to be acquired instead of making payment in cash, and we have no doubt but that the persons interested in the land to be acquired will gladly accept such land in lieu of cash. But we think it unreasonable that they should be compelled to do so if they do not wish to do so.

62. It has also been suggested to us that, while Section 31 (4) in itself permits the Collector to accept land required as a gift instead of awarding cash compensation, there are Executive Instructions of Provincial Governments which prevent this. We have not come across any such Instruction. The correct legal position is that the Collector cannot refuse to make an award of the compensation payable in accordance with Sections 23 and 24 on the ground that the persons interested have expressed their willingness to make a gift of the land. He must make an award. If then the persons interested are really willing to make a gift of the land to Government, they should draw the amount of compensation awarded to them and repay it to the Government as a contribution to the work for which the land is being acquired. In the Provinces which we have visited we have found no Executive Instruction which is contrary to this, and we see no necessity to alter this legal position.

The Secretary-Member brings to our notice the following Executive Rule of the Government of Assam published in the Assam Land Acquisition Manual.—

> "When any person offers to make a free gift of land in which other persons hold interests, the land should be acquired under the Land Acquisition Act and awards should be made to all persons interested, the person who agrees to make a gift putting in a petition waiving his claim to compensation, provided that he has *sui juris* full powers of alienation."

and he thinks that this Rule requires modification in view of the reasons given in the preceding portion of this paragraph, and as it is difficult to be satisfied whether the donor has *sui juris* full powers of alienation.

The Engineer Member differs from this view and appends the following note:—

"In the case of a new road, the people of the area served by the proposed road are often so much interested in its formation, that to facilitate Government or Local bodies undertaking it, they offer lands free of cost. A large

milage of roads in Madras has been constructed on lands so gifted by the people. In several cases, the gift of lands was even made a condition for the Government or Local body undertaking the work. The Chief Engineer, Punjab, informed us that even in that Province considerable milage of roads have been formed on lands gifted and acquired on payment of nominal compensation.

In order to have undoubted title over the lands it is necessary to acquire them under the Land Acquisition Act. The notices required under the Act can be given to all persons interested and when any person so interested is willing to make a free gift of whatever rights he possesses and gives a statement in writing to the Land Acquisition Officer to that effect, there should ordinarily be no bar to such acceptance. Donors' rights only are accepted and those of others will be dealt with in the ordinary course.

The procedure laid down in the Assam Manual and quoted by the Secretary-Member seems quite in order, and even if of doubtful legality should be rendered valid and provided for in Section 31 (4) of the Land Acquisition Act for general application. As in most cases the offer will come only from persons competent to gift them, there will ordinarily be little occasion to pay large sums during acquisition.

Paying compensation to the party and leaving it to his option to make a gift of the amount will in most cases make Government or the Local body lose the amount. At the stage of payment of compensation the party will know that even without his gift the road has come and he need not make the payment."

(ix) *Proposals to peg or scale down the market value*

63 We have been directed to enquire to what extent the value of land has been inflated as a consequence of the war conditions, and whether it will not be proper on this account to provide by legislation that such inflated value shall not be made a basis for the award of compensation for compulsory acquisition. We were asked to consider two alternative proposals:—

(a) That the market value of land should be pegged to a certain date prior to the effect of war conditions in inflating its value, or

(b) That an addition should be made to Section 23 (1) which would empower the Court to take into consideration, not merely the market value of the land at the date of the publication of the notification under Section 4, sub-section (1), but also any anticipated variation in land values not due to the expenditure of public funds, *e g.*, an anticipated fall in values.

64. With the first of these proposals we have dealt in paras. 6—13 of our Interim Report. In no Province, except Bengal, have we found the view taken that the value of land has risen greatly as a direct consequence of enemy action. In fact we have found no general agreement that there has been any considerable increase in the value of land generally. Where there has been considerable increase in such value since 1939, it appears that it has taken place mainly in urban and suburban areas and environs. We have nothing, therefore, to add to what we have already written regarding this proposal in our Interim Report.

65. For the second proposal we have found no support anywhere. Clearly it would not be proper to require the Court to take into consideration merely an anticipated fall in land values. If the Court is to be required to take into consideration anticipated variations in land values at all, it must be empowered to take into consideration also an anticipated increase in values. We have found general agreement that it will be impossible to place before the Collector or the Court evidence which will enable either to give a reasoned finding that

any rise or fall in the value of land to be acquired will take place. To make a reliable estimate of the likely trend of prices, whether of land or of any other commodity, is not practically possible. There must be an element of speculation in any anticipation of the range of future values. We do not consider that it will be proper to empower the Court or the Collector to embark on such speculation.

66. At Lahore an Officer, who appeared before us, pressed us to consider the suitability of recommending that land values should now be standardised at a certain level for all time. He based his argument on the view that urban values have now reached such a high level as to constitute a formidable obstacle in the way of any improvement of urban areas owing to the high cost of acquiring land.

This proposal goes much further than any proposal that has been adopted in the United Kingdom. The recommendation of the Uthwatt Committee was to adopt land values as at 31st March, 1939, as standard values "for such period as will enable the long-term policy of planning to be determined and any alterations in the present principles governing compensation to be brought into force." In the United Kingdom Town and Country Planning Act, 1944, these values have been adopted as standard values for a period of five years only from the commencement of the Act. In the White Paper it was suggested that the position should again be reviewed after the expiry of this period of five years.

67. We consider that it would be quite impracticable to standardize land values generally in any Province of British India. At the most a case may be made out for standardizing land values in certain urban areas. But the difficulty is to fix a date at which it will be reasonable to fix such land values. In Calcutta we were warned against making any proposal to fix land values at any specific date on the ground that a fall in values may now be anticipated. The value of land is closely connected with the trend of general economic conditions, and these are largely reflected in agricultural prices. These prices have fluctuated enormously since 1918, and the market value of land has been affected accordingly. In 1939 agricultural prices were depressed, and the market value of land therefore generally low. We are, therefore, unable to recommend that any attempt should be made now to standardize land values for all time.

CHAPTER IV.—REFERENCES TO COURT

68. Section 18 (1) of Part III of the Land Acquisition Act entitles any person interested, who has not accepted the award, to require the Collector to make a reference to the Court to determine his objection whether it be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

69. The expression "Court" is defined in Section 3 (d) as meaning "a principal Civil Court of original jurisdiction, unless the Provincial Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act." The principal Civil Court is ordinarily the District Judge. When a special judicial officer is appointed to perform the functions of the Court under the Act, he does not exercise jurisdiction concurrently with the District Judge, but the jurisdiction of the District Judge is excluded. The special judicial officer takes his place for the purposes of the Act.

70. The Bengal Government have amended Section 3 (d) as follows:—

"(d) the expression "Court" means a principal Civil Court of original jurisdiction, and includes the Court of any Additional Judge, Subordinate Judge or Munsif whom the Local Government may appoint, by name or by virtue of his office, to perform, concurrently with any such principal Civil Court, all or any of the functions of the Court under this Act within any specified local limits and, in the case of a Munsif, up to the limits of the pecuniary jurisdiction with which he is vested under Section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887."

We consider that this is an amendment which might be usefully adopted generally. While it is no doubt desirable that the District Judge or a Judge specially appointed for the purpose should himself deal with the more important references under Section 18, it appears to us reasonable to empower the District Judge to transfer the less important references, particularly disputes as to the apportionment of compensation among the persons interested, to a subordinate court. This will reduce delay in the disposal of references.

71. We may, however, observe here that the undertaking of a project, for which land has to be acquired, need not necessarily be delayed on account of a reference under Section 18. For Section 16 empowers the Collector to take possession of the land at once when he has made his award under Section 11. Delivery of possession is not necessarily to be delayed on account of a reference under Section 18. But the result of such a reference may of course affect the financial cost of the project.

72. The various acts, which have created Town Improvement Trusts, have provided for the constitution of a special Tribunal to perform the functions of the Court under Section 18. The President is a senior judge or lawyer, and he is assisted by members who act as assessors. It has been suggested to us that similar Tribunals should be constituted generally to deal with references under Part III of the Land Acquisition Act. This would be a return to the system prevailing under the previous Land Acquisition Act X of 1870. It was abandoned when the present Land Acquisition Act was introduced, since it was found to have been a failure.

73. We have found little support for this suggestion, and, from the information which we gathered of the working of the special Tribunals constituted for the various Improvement Trusts, our conclusion is that the disposal of references will not be improved by constituting Tribunals generally to deal with them in place of the Court as at present.

One suggestion made to us was that, for the purpose of dealing with references on account of land to be acquired for the various Post-war Reconstruction Schemes, a special Tribunal or Tribunals should be constituted for each province to tour the districts, in which land acquisition is taking place, for the disposal of references. It was suggested that the President should be a retired High Court Judge or other judicial officer of special experience, and that he should be assisted by an experienced judicial officer of a lower grade and by an experienced revenue officer or professional surveyor.

We anticipate that considerable difficulty will be experienced in obtaining the suggested personnel, and that the volume of the work to be done will hardly justify the expense. Further such a peripatetic tribunal will work under the disadvantage of lack of knowledge of the local conditions of the districts from which the references have been made. Such local knowledge is very necessary for the proper disposal of references.

74. In some Provinces it was emphasised to us that, if special Tribunals are constituted, there must be an unrestricted right of appeal to the High

Court from their decisions allowed to both the Provincial Government and persons interested in the land acquired. There should be a right of appeal on questions of fact as well as on questions of law. We are inclined to agree with this. But our final conclusion is that no change in the existing system is required by which references are determined by a Court, except the enlargement of the definition of a "Court" which we have recommended in para. 70.

75. The expression "person interested" has been defined in Section 3 (b) as including "all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land."

This definition excludes the Provincial Government on whose behalf acquisition is being made. The proviso to Section 50 (2) makes it clear also that no local authority or Company, on behalf of which acquisition is being made, may demand a reference under Section 18.

Section 25 (1) prevents the Court from awarding an amount on a reference which is less than the amount awarded by the Collector under Section 11.

The exclusion of the Provincial Government from the right to make a reference, and the restriction of the Court from awarding an amount less than that which has been awarded by the Collector, are doubtless due to the fact that, as we have pointed out in para. 30 of Chapter II, the Collector acts in making his award as agent on behalf of the Government.

76. It has been suggested to us that the provision that the Court shall not award an amount less than that awarded by the Collector is none-the-less unreasonable. While the award made by him may be treated as an offer by an authorised agent of the Government which is binding on it, yet, when the person interested refuses to accept the award but instead demands a reference to the Court, the offer by the Collector on behalf of the Government should be treated as withdrawn. It should, therefore, be open to the Government, not merely to contest the objection before the Court, but also to make a cross-objection that the Collector's award is in fact excessive. If the cross-objection is upheld, the Court should be entitled to reduce the award.

77. We have found considerable support for this suggestion, and it appears to us reasonable. At present the right to demand a reference under Section 18 has much of the element of a gamble in which the person making the demand has little to lose. At the most he may be required by the Court to pay the Government's cost of the reference if the Collector's award is upheld. When a person, in whose favour an award is made, refuses to accept it, we see no reason why the award should be made binding on the Government none-the-less.

We recommend, therefore, that the words in Section 25 (1) "or be less than the amount awarded by the Collector under Section 11," be deleted.

Provision should also be made by a Section 22-A, for a cross-objection to the objection to be made by the Provincial Government, or by a local authority or Company on whose behalf acquisition is being made, and it should be made clear that, if the Court upholds the cross-objection, it may reduce the amount awarded by the Collector.

78. The further suggestion has been made that the Provincial Government, or local authority or Company on whose behalf acquisition is being made, should be given the right to require a reference to the Court as well as "any person interested".

We have found considerable difference of opinion regarding this suggestion. On the one hand it has been argued that, just as the Collector is liable to commit the mistake of making an inadequate award, equally he is liable to commit

the mistake of making an excessive award. It is, therefore, unreasonable that, while the persons interested should have a right to make a reference on the ground that the award is inadequate, the Government, or the local authority or Company, should have no right to make a reference on the ground that it is excessive. Instances have been cited before us in which excessive awards have been made

On the other hand it has been argued that, since the Collector is acting as agent on behalf of the Provincial Government, the Government must accept his award, and it will not be suitable to provide for the Government to make a reference against the offer of its agent. Since the local authority, or Company is taking advantage of the provisions of the Act for compulsory acquisition in preference to acquisition by agreement, it must be held equally bound.

79. At the same time we have found that the Provincial Governments have generally found it necessary to attempt some form of control of the awards made by the Collector. This has generally taken the form of requiring him to make a reference to higher authority when his award will exceed a certain amount, or will exceed by a certain percentage the original estimate of the cost of acquisition, and by requiring a subordinate officer exercising the powers of the Collector to consult him freely. The Bombay Government require that proposed awards of compensation of more than Rs. 10,000 must be submitted by the Collector to the Provincial Town Planning and Valuation Department for scrutiny.

The Bombay High Court have, however, pointed out that, since the Act vests plenary powers in the Collector, it is not proper for a Provincial Government to attempt to fetter him in the exercise of his powers by Executive Instructions. The Executive Instructions of other Governments recognise this by explaining that, while the Collector or Land Acquisition Officer should take into consideration advice tendered to him by superior authority, he is not legally bound to accept it.

80. Certainly it seems to us unreasonable that the Provincial Government should have no power of control over the Collector in the exercise of his functions under the Land Acquisition Act, and no remedy against an excessive award made by him. It seems to us unsatisfactory to rely for control on Executive Instructions of doubtful validity.

The majority of us consider, therefore, that the Act should be amended so as to give to the Provincial Government, or a local authority or Company, the right to make a reference to the Court against the Collector's award.

81. The Chairman, on the other hand, finds considerable force in the argument that, since the Collector acts as the agent of the Government, it will not be proper that the Government should have the right to challenge his award by a reference to the Court, nor does he think that the Court would be inclined to view with approval such a reference.

He considers, however, that while the Collector acts as agent of the Government, it does not follow that plenary powers must necessarily be vested in him to act as agent. As an alternative, therefore, to the suggestion that the Provincial Government, or local authority or Company, should have the right to make a reference to the Court under Section 18, he suggests that provision should be made in Part III-A, of the Act for revision by a superior revenue authority of the Collector's award either when no application has been made for a reference under Section 18, or in respect of so much of the award in respect of which no reference has been made. The period within which revision may be made should be either 60 or 90 days from the date of the award, and it should be further provided that, if the revising authority reduces the award, any person interested may then require a reference to the Court in accordance with the provisions of Part III.

The Engineer-Member, however, considers that it will be more satisfactory to provide for a reference to the Court by Government as is given to the persons interested. Reference to a higher revenue authority may cause suspicion in the minds of persons interested and in case of any reduction in the award by the superior Revenue Officer, there will almost invariably be a reference to Court. It will tend to smooth working and avoid considerable loss of time and expense if instead of making a reference to a higher Revenue authority provision is made enabling Government to make a reference to the Court.

82. A further suggestion has been made that the Provincial Government, or local authority or Company, should have a right of appeal against the Collector's award.

We have found little support for it, and do not approve it ourselves.

83. Section 21 of the Act restricts the scope of the enquiry before the Court "to a consideration of the interests of the persons affected by the objection."

Section 53 renders the provisions of the Code of Civil Procedure applicable to all proceedings before the Court, "save in so far as they may be inconsistent with anything contained in this Act."

There appears to have been some conflict of judicial opinion as to whether, in view of Section 53, Rule 7 of Order VI of the Code of Civil Procedure prevents a person, who has required a reference, from taking any ground before the Court, which he has not stated in his application for a reference under Section 18 (2). In V. Narayana Gajapathiraju *vs.* Revenue Divisional Officer of Vizagapatam A.I.R. 1937, 903, the Madras High Court appear to have held that, while such a person may not take any plea before the Court which is inconsistent with any of the grounds stated in the application under Section 18 (2), he may take any plea not inconsistent, which is not stated specifically in the grounds, in support of any of the four objections which he is entitled to raise under Section 18 (1).

84. It appears to us very necessary that the hearing of a reference by the Court should be confined to the grounds on which a reference has been claimed in the application made under Section 18 (2). Otherwise the Government is likely to be seriously prejudiced in supporting the Collector's award, for it will have no opportunity to obtain any report from the Collector on the new plea taken. We recommend, therefore, that Section 21 should be amended to secure this by adding such words as:—

> "and to the grounds on which objection to the award is taken as stated in the application made to the Collector under Section 18 (2)."

CHAPTER V.—Partial Acquisition

85. Section 16 of the Land Acquisition Act provides that, after the Collector has made an award and taken possession of the land to be acquired, the land shall thereupon vest absolutely in the Crown free from all encumbrances. It follows, therefore, that acquisition under the Act, except as provided in Part VI, must be of all interests in the land to be acquired. There cannot be acquisition of any partial interest.

It has been held that, when the Government is the owner of a partial interest only in any land, it may acquire the remaining interests by proceeding under the Land Acquisition Act. But, when the Government is not the owner, it cannot acquire only a partial interest from the owner.

86. This is the general law in the United Kingdom, but statutory provision has been made for the purchase of a limited interest from owners by agreement when such limited interest is sufficient for the purpose for which land is

required. Similarly Section 90 (2A) of the City of Bombay Act, 1888, empowers the Commissioner to purchase a partial interest in any land by agreement with the owner.

It has been suggested to us that, in order to secure control of roadside lands, provision should be made which will enable the Government to acquire only any partial interest in the land which it is desired to control, leaving ownership of the land with the owner and the right to use it in any manner which will not be contrary to the partial interest or interests acquired. It is contended that by this method the cost of acquisition to the Government will be reduced while at the same time the owner will have the benefit of retaining partial ownership and use of his land.

87. We have found no general support for this suggestion on the ground of the difficulty of estimating the compensation which should be paid for the partial interest acquired. Those, who have supported the suggestion, have been unable to show us any practical basis for assessing such compensation which could be adopted by the Collector or maintained before a Court on a reference under Section 18. No officer has been able to devise such a basis. Clearly there can be no actual market for partial interests only in land from which evidence of the market value of such interests can be obtained.

88. The Uthwatt Committee recommended that Parliament should acquire all development rights in undeveloped land in the United Kingdom, and were able to devise a basis on which compensation for these rights should be paid. But for Provincial Governments to attempt to acquire development rights in all roadside land along the roads included in the Post-War Road Programme will increase enormously both the difficulty and the cost of land acquisition in connection with these schemes. The proposal to include in the Land Acquisition Act an option to acquire any partial interest in land instead of the whole at the discretion of the Government really goes much further than the proposal of the Uthwatt Committee for the acquisition of development rights only.

89. We are unable, therefore, to support the suggestion. We accept the general view that, when compulsory acquisition is necessary, land necessary to meet all anticipated requirements should be acquired. If this involves the acquisition of land in excess of immediate requirements, then this land should be leased out for temporary use. But for the control of roadside land generally we consider that special legislation is required as we shall be recommending in Part III of this Report.

CHAPTER VI.—Temporary Occupation of Land

90. Part VI of the Land Acquisition Act contains provisions for securing the temporary occupation of land. Section 35(1) empowers the Provincial Government to direct the Collector to procure for a period not exceeding three years the occupation and use of any waste or arable land needed for any public purpose. Our terms of reference did not require us to take into consideration the provisions of this Part, nor did the Questionnaire issued contain any questions regarding it. At a late stage of our enquiry, however, our attention has been drawn to the fact that the Part contains no provision for entering upon any land for the purpose of surveying the land likely to be required for temporary occupation. Section 4(2) is not applicable, since Section 4 applies only to the permanent acquisition of land, as is evident from the heading "Acquisition" to Part II of which it forms part.

91. In particular the General Manager of the O. & T. Railway has reported that difficulty is experienced by railway officials in having recourse to the provisions of the Part owing to this omission, since they meet with objection from the occupiers of land when they seek to enter on it to make any survey.

We recognise that this difficulty may be a real one, for, in the absence of statutory provision permitting entry on land for the purposes of making a survey, the occupiers are legally entitled to object to such entry. The difficulty is increased by the fact that the Executive Instructions of certain Provincial Governments, notably the Governments of Bihar, Bengal and Assam, require that any departmental authority wishing to employ the provisions of the Part must in the first instance make an application to the Collector supported by a plan of the land of which temporary occupation is desired and obtain from him an estimate of the probable compensation payable for the temporary occupation. The omission from the Part is no doubt due to the fact that ordinarily the area of any land, of which temporary occupation only is required, is small, and it can readily be identified without any survey. But Railway Administrations not infrequently require a considerable area for temporary occupation for the ascertaining of which survey is necessary.

92. We consider that the omission should be made good. Just as Section 4(1) does not require the preparation of a plan before a notification is issued, so there is nothing in Section 35(1) which requires that the Provincial Government must be in possession of a plan of the land required for temporary occupation before it makes a direction to the Collector. Nor do we consider that any reference to the Collector is necessary before the Provincial Government makes a direction. If it is considered necessary to obtain an estimate for budgetting purposes, then the Collector may be asked to furnish a rough estimate on an acreage basis. But, in view of the provisions in Section 35(2) for the calculation of compensation, he can only be expected to furnish an accurate estimate after a direction has been made by the Provincial Government and he has taken proceedings in accordance with it in the manner provided in Section 35(2).

93. We consider that it should be sufficient for the departmental authority to approach the Provincial Government direct with a request that a direction be issued to the Collector to procure the occupation and use of an approximate area in a certain locality for a stated purpose. For this no survey and plan should be necessary. The Provincial Government should then issue a direction to the Collector on the basis of this information furnished by the departmental authority.

For the existing Section 35(2) should be substituted a sub-section drafted on the lines of Section 4(2) as follows:—

> "(2) The Collector shall thereupon cause public notice of the substance of the direction to be given at convenient places in the locality in which the land is situated. Thereupon it shall be lawful for any officer, either generally or specially authorised by the Collector in this behalf, and for his servants and workmen,—
>
> to enter upon and survey and take levels of any land in such locality etc., etc.".

The existing sub-section (2) should be renumbered (3), and should start as follows:—

> "(3) On receipt of plans detailing the land required the Collector shall give notice in writing etc.".

The existing sub-section (3) should be renumbered (4).

Executive Instructions which require a plan to be submitted to the Collector and an estimate obtained from him before proceedings under the Part are initiated should be amended suitably.

PART II

CHAPTER VII.—Recovery of Betterment (or Unearned Increment) in Land Value

94. We have been directed to advise on the steps that should be taken to secure to the public any betterment (or unearned increment) in land value arising from public expenditure on roads. In Chapter IX of their Final Report, the Uthwatt Committee have reviewed in detail the steps attempted in the United Kingdom to secure both. We have dealt with the question briefly in para. 17 of our Interim Report, but have since had the opportunity to investigate it more extensively.

It seems necessary at the outset to make a clear distinction between unearned increment to the value of land and betterment to the value of land.

(i) *Unearned Increment*

95. Unearned increment includes any increase in the value of land due to any cause other than the active effort of the landlord.

It has been suggested to us that the construction and improvement of roads necessarily increases the value of the land served by them by improving the facilities for transport of the produce of the land to the market. Consequently, when roads are constructed or improved, it will be proper to levy a cess on the landlords of the land served by a road constructed or improved as a share of the unearned increment accruing to the land which should be paid as a contribution to the cost of construction and maintenance.

96. We agree that, since roads improve facilities for marketing the produce of land, the result of their construction is likely to be an increase in the value of the produce to the grower, and thus may lead to an increase in the value of the land. But facilities for transport are by no means the only factor governing the value of produce to the producer. A governing factor is the range of agricultural prices. Further any increase in the value of the produce passes immediately to the cultivator, who is not necessarily the landlord. If he is not the landlord, the increase in the value of the land to the landlord on account of the increase in value of the produce is only gradual, since a landlord cannot increase his rents immediately owing to an increase in the value of produce to his tenants. Moreover the benefit of roads is by no means confined to the landlords and cultivators of the land served by them. It is enjoyed by the community at large. And, in the case of agricultural land along the roadside, it must be borne in mind that the value of such land is often depreciated owing to the deleterious effect of dust from the road on the crops on the land and the increased liability for stray cattle to stray on to the land and damage crops.

While, therefore, we accept that in the case of purely local roads serving principally a local area only, it may be suitable for the local authority to impose a special rate on the owners and occupiers of land in the locality for the purpose of constructing or improving a local road, we do not favour any attempt to recover unearned increment from landlords generally on account of the construction of new roads or improvement of existing roads by imposing any cess or special tax on unearned increment. We consider that the imposition of a road cess would be a retrograde measure, since the tendency of modern Land Revenue policy has been to abolish cesses for special purposes, except local rates for the finance of District Boards and rates imposed in payment of a special service rendered, such as a Water Rate. The development of roads is essential for the benefit of the community at large; not merely for the benefit of the landlords. Consequently we consider that it should be accepted that the expense involved should be a charge on general revenues. As we have pointed out in para. 12 of Chapter I, in temporarily settled Provinces a share

in unearned increment to land is secured by Government at a new settlement through the share taken of any increase in the assets of the landlord in his land. We consider that Provincial Governments should be content to realise in this manner a share in unearned increment in agricultural land from the construction of roads.

(ii) *Betterment*

97. The term "betterment" is defined in para. 260 of the Final Report of the Uthwatt Committee in its technical sense as meaning "any increase in the value of land (including the buildings thereon) arising from Central or Local Government action, whether positive, *e.g.*, by the execution of public works or improvements, or negative, *e.g.*, by the imposition of restrictions on other land." It has been generally accepted in the United Kingdom for some time past that it is proper for the State to take a share in such increased value. In 1894 a Select Committee of the House of Lords on Town Improvements (Betterment) commended the principle "that persons, whose property has clearly been increased in market value by an improvement effected by local authorities should specially contribute to the cost of the improvement." The Uthwatt Committee concluded that:—

> "To sum up, the fairness of the principle of betterment commands general acceptance. It is in its practical application that difficulties arise."

In British India the principle of betterment has been adopted in the various Acts constituting Town Improvement Trusts. It is also applied in Section 27 of The Northern India Canal and Drainage Act, 1873, which imposes an "owner's rate" in addition to an occupier's rate on the owners of canal-irrigated lands in respect of the benefit which they derive from such irrigation. The Secretary-Member cites the lumpsum levy in the Madras Province of an Inclusion Fee per acre on all dry land in the Delta areas newly converted into wet as another instance. We think that the fairness of the principle should be accepted in British India as it has been accepted in the United Kingdom.

98. Applying the definition of betterment to the construction and improvement of roads, it follows that any increase in the value of land, which may result from such construction or improvement, must result directly and solely from the construction or improvement in order to constitute betterment. We have found general agreement that such betterment will only arise in certain restricted and clearly defined areas:—

(a) In urban areas it may arise in the land adjoining roads which are materially improved, or it may result from construction of a new road;

(b) In rural areas in the vicinity of towns it may arise from the creation of potential value to agricultural land for conversion more lucratively to building land by construction of new roads leading from the town or improvement of existing roads;

(c) In rural areas remote from any town it may arise when road construction or improvement improves the accessibility of an area, and thus renders agricultural land in it suitable for development more lucratively for industrial purposes.

These consequences from the Road Programme will result in certain restricted areas only which can be clearly defined.

99. The Uthwatt Committee considered three principal methods by which attempts have been made in the United Kingdom to secure a share of betterment:—Recoupment, Set-off, and Direct Charge.

100. By Recoupment the authority undertaking a public improvement acquires the land which it is considered will be increased in value by the improvement to be undertaken, and then, after completing the improvement

disposes of the land at an increased price. This method of recovering betterment has been adopted generally by the Town Improvement Trusts in British India.

Clearly it is not a method which can be adopted generally in the case of the construction and improvement of roads, since the initial cost of acquisition of land for the road would be increased enormously. But it has been suggested to us that the method might be applied with advantage in certain limited cases of roads included in the Road Programme, where it appears certain that the construction or improvement planned will result immediately in the development of the roadside land by conversion from agricultural to industrial or residential purposes. In such a case it will be advantageous to acquire the roadside land and dispose of it at the increased value which will result after laying out the land for the lucrative purposes to which it may be applied. As an instance we have been referred to the proposal to construct a National Highway to lead west from Howrah Municipality towards Delhi. It is anticipated that the effect of this construction will be to develop immediately the agricultural land outside the Municipality for industrial and residential purposes.

The conclusion of the Uthwatt Committee, with which we agree, is that purchase for recoupment is a sound principle. As the Land Acquisition Act is framed at present, it cannot, however, be applied generally for the purpose by compulsory acquisition. The legal position is that only so much of land can be acquired under the Act as is required definitely for the public purpose for which acquisition is sought. We recommend, therefore, that the definition of "public purpose" in Section 3(f) of the Act should be enlarged so as to include the acquisition of land for the purpose of recoupment of the cost, in whole or in part, of any public improvement.

101. A variation of the method of Recoupment has been incorporated in the Calcutta Improvement Act, 1911. Under this Act, the Board of Trustees is empowered to acquire, not merely the land required for the execution of an improvement scheme, but also land which will be affected by the execution of the scheme. Section 78 empowers the Board on the application of the owner of, or any person having an interest in, land which is not required for the execution of the scheme to withdraw from the acquisition in consideration of the payment of a sum to be fixed by the Board. Section 24, which empowers the Board to enter into and perform all such contracts as they may consider necessary or expedient for carrying out any of the purposes of the Act, has been applied to extend the application of the principle to land required originally for the execution of the scheme. These provisions have been made applicable to the Delhi Improvement Trust, and somewhat similar provisions are included in the Punjab Town Improvement Act, and the Nagpur Improvement Trust Act. We were informed at Calcutta that these have proved to be very useful methods of recovering betterment, but we do not consider that they can be usefully applied to the contemplated road schemes.

102. Set-off of betterment against compensation payable for the acquisition of land is prevented by Section 24 *sixthly* of the Land Acquisition Act. We have dealt with this briefly in para. 58 of Chapter III.

The Uthwatt Committee concluded that the principle of set-off is *prima facie* equitable. But they found that the application of the principle under the Acts, in which it has been applied in the United Kingdom, has been unsatisfactory, largely owing to the practical difficulty of proving in anticipation at the time of land acquisition the increase which will be effected in the value of the land retained by the owner by the improvement of the land acquired from him.

As we have explained, provision for set-off is made in Sections 301 and 354T of the City of Bombay Municipal Act. We were informed at Bombay that the Sections have proved useful and have been worked successfully. In Karachi, on the other hand, where they are also applicable, we were informed that they have proved of no practical value.

In the acquisition of land in large towns it may be possible to work this method successfully. But we consider that in land acquisition generally the same practical difficulty in applying it will be experienced by the Collector or the Court as has been experienced in the United Kingdom. We do not recommend, therefore, that Section 24 *sixthly* of the Land Acquisition Act should be amended for general purposes so as to apply the method of set-off to the acquisition of land for the roads included in the Road Programme.

103. By the method of Direct Charge a levy is made upon all persons whose lands are increased in value by an improvement.

The Uthwatt Committee found that this method has not worked satisfactorily in the United Kingdom due largely to the acceptance of the principle of deferment by which a landlord, who has made no claim for compensation in connection with the improvement scheme, may require the claim for betterment to be deferred until he has disposed of the property by sale or lease or has changed its use, and has thus realised the enhanced value. If deferment then takes place, no claim for betterment can be made after 14 years from the date of the original claim.

This method has been applied by Sections 78 A-G of the Calcutta Improvement Act, 1911. These empower the Board of Trustees to levy a betterment fee equal to one-half of the increase in value of land resulting from the execution of an improvement scheme. At the time of notifying the scheme, the Board notify the land in regard to which it is proposed to recover a betterment fee. Subsequently, when the Board consider that an improvement scheme is sufficiently advanced to enable the amount of betterment fee to be determined, they declare that the execution of the scheme shall be deemed to have been completed by this date for the purpose of determining the betterment fee. The fee is then assessed on the owners of the land, or any person having an interest therein, on the estimated increase in value at this date over the value before the scheme was undertaken.

These provisions have been extended to the Delhi Improvement Trust. Similar provisions for the levy of a betterment contribution have been included in the Nagpur Improvement Trust Act, in the Bombay Town Planning Act, 1915, and in the Madras Town Planning Act, 1920. They have also been applied recently in Sections 100—106 of the Cawnpore Urban Area Development Act, 1945, for levy of a betterment tax.

In Calcutta we were shown figures which indicate that the method of levying betterment fee under the Calcutta Act has proved very successful. We were also informed in Bombay that the provisions of the Bombay Act have proved quite successful. In Madras the Town Planning Act, 1920 has apparently not been successful. We have been unable to ascertain the extent of the success achieved by the provisions in the Nagpur Improvement Trust Act.

104. After considering various alternative schemes which were largely variations of the above methods, the Uthwatt Committee concluded by recommending that any attempt to distinguish between unearned increment and betterment should be abandoned. They proposed that a valuation should be made at once of all developed land. Thereafter a revaluation should be made every 5 years, and a levy made on any increase in the annual site value over the value determined at the previous valuation.

This recommendation has been rejected in the White Paper, 1944, mainly on the ground of the difficulty and expense of the successive valuations proposed. For the same reasons we consider that it would be quite impracticable to adopt the recommendation in British India.

The greater part of the rise in land value when a road work is undertaken takes place when the land is converted from agricultural to building land. This rise in value will be substantial. After this initial increase which will be tapped for betterment there will be in course of time small increases partly due to betterment and partly to other causes. The subsequent periodical levy on the lines recommended by the Uthwatt Committee and rejected in the White Paper, 1944, will therefore yield only a small income which will not be commensurate with the expenditure in assessment and collection.

Further in urban and suburban areas and newly developing industrial areas where only we contemplate substantial betterment to accrue on account of road construction (*vide* para. 98), there will usually be a local body whose general source of revenue will include a levy on the annual rental value of buildings. The slow rise that takes place for several years after the 1st levy of betterment fee will therefore be tapped by that local body. On this ground also we do not recommend the periodical levy on the lines suggested by the Uthwatt Committee.

The Secretary-Member, however, thinks that the Provincial Governments should have the power to revise the betterment values periodically say, every 5 or 10 years. This point was particularly stressed before the Committee by the Adviser to the Governor of Bengal, in charge of Public Works (Roads). The Secretary-Member considers that this power to revise periodically is particularly necessary in a country like India which is just on the threshold of far-reaching economic development unlike in the United Kingdom which has already reached a high state of economic prosperity, as otherwise, the Government will stand to lose in the long run. He thinks that in India the cost of assessing the betterment values periodically will not be incommensurate with the yield till this country becomes fully developed, especially as in most Provinces in India there is already a satisfactory Land Revenue machinery.

105. The White Paper proposes to prohibit the future development of land in the United Kingdom without permission, and to levy a betterment charge when the permission to develop is granted based on the difference between the value of the land with the benefit of the permission and its value if permission had been refused.

106. A further method of recovering a share of betterment is to levy an enhanced rate of Stamp duty on transfers of immoveable property within an area in which betterment has accrued. We have been referred to Section 82 of the Calcutta Improvement Act, 1911.

A similar provision is made in Section 77 of the Nagpur Improvement Trust Act, 1936, and has been recently introduced in Section 107 of the Cawnpore Urban Area Development Act, 1945.

107. Having considered these various methods applied and proposed, we have reached the conclusion that the following methods will be the most appropriate for recovering a share of betterment due to the construction and improvement of roads in the areas mentioned in para. 98.

(a) *Urban Areas*

108. In towns, in which a Town Improvement Trust or Development Board is in operation, we recommend that an arrangement should be made with the Trust or Board for it to carry out any road scheme from which betterment is expected to arise. The Trust or Board may be encouraged to carry out an

improvement scheme in connection with the proposed road scheme. It may then recover a share of betterment by the methods applicable under the Act governing its operation.

We understand that the Cawnpore Development Board are already planning to undertake the construction of the bypasses round Cawnpore, which are included in the Road Programme, and to carry out improvement schemes in connection with the proposed bypasses. The Board will then realise a share of betterment under the Cawnpore Urban Area Development Act, 1945. We recommend the general adoption of this method of undertaking road schemes in towns with an Improvement Trust or Development Board.

109. In towns, in which there is no such Trust or Board, we recommend the adoption of either of the two following alternatives or both:—

(i) We understand that all Municipal Acts empower the municipal authority to impose a tax or rate on buildings or lands or both. We recommend, therefore, that, when betterment has been created in a definite area as a result of a road or other public improvement, the municipal authority should levy a special improvement rate on this area in excess of the ordinary tax or rate on buildings and lands.

This method of recovering betterment has been discussed by the Uthwatt Committee in paras. 259 and 296-297 of their Final Report. It has been adopted in certain special areas in the United Kingdom and also in other countries. The Uthwatt Committee observed that "The idea of special improvement rates is not without merits." But they rejected it in favour of their own scheme largely on account of its limited application. We do not consider that any scheme for recovery of a share of betterment on account of the construction and improvement of roads can be applied universally. Consequently this objection will not apply to our proposal, which is limited to towns only in which no Improvement Trust or Development Board is operating;

The Secretary-Member does not agree with this recommendation as he sees no reason whatever for not giving to local authorities in such towns the same powers to tax betterment values as are given to Improvement Trusts or Development Boards.

(ii) The alternative method is the method discussed in para. 106 and is to empower municipal authorities to impose an increased rate of stamp duty on transfers of immoveable property in any area in which betterment has arisen.

We recognise, however, that the area may be so restricted that the revenue yielded by this method would be negligible. The Secretary-Member also considers that such a levy is discriminatory between the man who transfers his property and the man who does not, and also between property which changes hands frequently and one which does not.

(b) and (c).—*Rural Areas*

110. We have come to the conclusion that the time has arrived when Provincial Governments should take power by legislation to control the use of land for other agricultural purposes in rural areas. Already built up areas have developed round factories in many places in such areas outside municipal limits without any measure of control and with little regard for public health and convenience. As industrial development proceeds in rural areas, such areas may prove a serious obstacle in making proper provision for public health and convenience. Similarly residential areas have developed in areas outside municipal limits without any measure of control.

An attempt has been made to secure such power of control by the Delhi Restriction of Uses of Land Act, 1941, which renders subject to control any land adjacent to and within a distance of 440 yards from the centre line of

any road. An attempt on similar lines has been made recently in the United Provinces Roadside Land Control Act, 1945. These Acts restrict control to areas within a 1/4 of a mile on either side of roads. We see no advantage in restricting the scope of the Act in this manner, but consider that the power of control over any land should be taken. The Governor of Bihar has enacted an Act on these lines, The Bihar Restriction of Uses of Land Act, VIII of 1946.

Provision should be made to take a share of betterment, which has arisen in any controlled area, when permission is granted to convert any land from use for agriculture to use for building purposes. The method of operation that we contemplate is as follows:—

When an area, in which it is considered that betterment has arisen or is likely to arise, is notified as a controlled area, the Government should notify at the same time that it proposes to impose a betterment fee or tax when permission to build in the area is granted in future. When it is considered that betterment has arisen already, the fee or tax should be assessed on the estimated increase in value of the land for the building purpose for which permission is granted over its estimated value as agricultural land at the time when the area was notified as controlled. When, however, betterment has not already arisen but it is considered that it is likely to arise from an improvement under construction, it may be provided that the betterment fee will be assessed from a date to be subsequently notified as the date of the completion of the scheme. The increase in value will then be estimated as on that date or as on the date of application for permission to build, whichever is later.

We have received two objections to this proposal:—

The first is the practical difficulty of estimating the increase in value. We do not consider that this should prove formidable. We contemplate that the assessment of the fee or tax shall ordinarily be entrusted to the Collector or to an Officer of the District staff with experience of land acquisition work who is specially empowered. The calculation of the increased value will be similar to the calculation of potential value for the award of compensation under the Land Acquisition Act.

The second is that applications for permission to build will ordinarily be made by persons who have bought the land for the purpose. Thus the betterment value will be enjoyed by the seller, while the buyer will be made liable for the betterment fee or tax. To this the answer is that we have no doubt but that, when it is known that betterment fee or tax will be payable, the liability of the buyer to pay it will be taken into account in the determination of the sale price between him and his seller.

111. There remain the questions of the share of betterment which it is appropriate to take, and who should take it.

Theoretically the State is entitled to all betterment. But it has been recognised in the United Kingdom that it is not reasonable for the State to press its claim so far. The attempts made in the United Kingdom to obtain a share of betterment were limited originally to 50 percent. The Uthwatt Committee suggested that a percentage of 75 should be taken. The White Paper has proposed to take 80 per cent.

The Improvement Trusts, which levy a betterment fee or contribution, take 50 percent. This is the share of produce, which it was accepted originally that the State might fairly claim from land. The majority of us recommend that this rate be adopted generally.

In recommending this rate, we have been influenced by the following considerations:—

(1) As already explained in paras. 96 and 97 rise in value of land in a period is partly due to the work undertaken by the State and

partly due to other causes such as general rise of prices, conditions of money market etc. It is, however, exceedingly difficult to determine how much of the increase is due to betterment on account of the work undertaken by the State and how much to other causes. For purposes of assessment with reasonable accuracy, we can only ascertain the total rise in value and if we take 50 percent of this value as betterment levy we shall be making some allowance for the rise due to other causes and be taking a percentage much larger than 50 of the actual betterment.

(2) All the Improvement Trust Acts in India have recognised that it is equitable to take only 50 percent. of the rise in value of land as betterment levy and the population have come to recognise it as equitable.

(3) A reasonable margin should be allowed for stimulating private enterprise in developing the land.

(4) If more than 50 percent of the rise in value be taken for betterment levy, it is probable the law of diminishing returns will operate as people may take to development in regions where there will be no betterment levy.

The Secretary-Member is of opinion that there is no analogy between the fixing of Land Revenue at 50 percent share of the produce and the levy of Betterment Fee. In the case of Land Revenue, the State performs no function to bring about an increase in the yield of the land to the landowner, either directly or through increase in the price of the produce; whereas in the case of betterment, the new value or the additional value which has been created is due entirely to the action of the State. There is, therefore, no claim in equity for the landowner to any share of this increased value. This principle has been accepted in the levy of Excess Profits Tax during the War. It will, however, be expedient that a margin should be provided as an incentive to the landlord and to compensate him for errors in calculation. The Secretary-Member thinks that the reasons given by his colleagues for fixing the levy of betterment at the arbitrary rate of 50 percent were fully considered by the Uthwatt Committee in paras. 289 to 293 and 308 of their Final Report. He thinks that para. 308 of the Final Report of the Uthwatt Committee bears reproduction. It runs as follows:—

"308. We have shown that, of the existing methods for recovering "betterment" in its strict sense of increase in the value of land due to particular public improvements or provisions of planning schemes, set-off has been of little practical effect; that direct charge under the Town Planning Acts has been a failure; and that there is no prospect that either method will be any more successful in future, mainly because their first requisite is one which cannot be satisfied, *viz.*, the identification or segregation of the strict "betterment" element in the total increase in value of any property. The only successful existing method is recoupment which suffers from no such disability, for, where a public authority disposes of land which it has bought, the whole of any increase in value is automatically obtained for the community and the general or particular causes which have created it are irrelevant.

We are forced to the conclusion that no *ad hoc* search for "betterment" in its present strict sense can ever succeed, and that the only way of solving the problem is to cut the Gordian knot by taking for the community some fixed proportion of the whole of any increase in site values without any attempt at precise analysis of the causes to which it may be due."

The Secretary-Member thinks that the Uthwatt Committee had considered the chief reasons adduced by his colleagues in the earlier part of this paragraph before they recommended the periodic levy of betterment at 75 percent of the increase in the annual site value of developed land over the value determined at the previous valuation. The Committee has not accepted the above method of valuation recommended by the Uthwatt Committee. On the other hand the method recommended by the Committee in para. 110 approximates to the method recommended by the White Paper on the Uthwatt Committee issued in June 1944. Para. 16(e) of the White Paper runs as follows:—

> *"Betterment charge.*
>
> Owners of land, whether developed or undeveloped, will for the future, whenever permission is granted to develop or redevelop for a different use, be subject to a betterment charge at the rate of 80 percent of the increase in the value of the land due to the granting of the permission, *i.e.*, 80 percent of the difference between the value of the land with the benefit of the permission and its value if permission had been refused."

The Secretary-Member, however, realises that the conditions in the United Kingdom and India are different. He would, therefore, emphasise the need for elasticity in the matter of fixing the rate of Betterment which should vary according to the conditions prevailing in the several Provinces, so that the rate could be adjusted by the Provincial Governments to suit different conditions prevailing in different Provinces, and, in different parts of the same Province. He considers that it would not be unfair to fix the maximum at 75 percent of the increased values, especially in areas in and adjoining big cities like Calcutta and Bombay. He would also recommend a graduated scale of levy as in the case of the Death Duties in England and the levy of Commercial Taxes in the Madras Province.

We recommend further, as provided in Section 78 G of the Calcutta Improvement Act, 1911, that the person liable to betterment fee or tax should be given the option, instead of making payment outright, of executing an agreement to leave the amount assessed as a charge on his interest in the land, subject to the payment in perpetuity of interest at the rate of 6 percent per annum. At the same time it should be at his option to redeem the charge at any time by payment of the principal outstanding.

112. As for the question what authority should take the proceeds of any betterment fee or tax, theoretically that authority should take it which has financed the improvement which has given rise to the betterment.

As we have pointed out, however, a betterment fee or tax is a tax on land. Consequently it is included in Serial 42 of List II of the Seventh Schedule to the Government of India Act, 1935, the Provincial Legislative List. Consequently, although, as we understand, the Central Government propose to find a large proportion of the funds required to finance the Road Programme, it will not be permissible for the Central Government to take any share of any betterment fee or tax. The proceeds must be taken either by the Provincial Government or by a local authority.

In the case of urban areas we think that it will be inappropriate for a Provincial Government to claim the proceeds, and that they should be taken either by the Town Improvement Trust or Development Board, or by the municipal authority, as the case may be. In rural areas we contemplate that the fee or tax shall be assessed and collected by the Collector. But we think that it will be appropriate that the net proceeds should be paid to the District Board as a contribution to the finance of these Boards.

113. While in para. 96 above we have opposed the proposal to levy a general Road cess as a contribution to the cost of construction and maintenance of

roads, we have made an exception in the case of purely local roads serving principally a local area only. It has often in the past been the practice to construct and improve such local roads by means of contributions raised from the local residents to be benefited. We think, therefore, that power might be given to the District Board, as we have suggested for municipal authorities in urban areas, to levy a special rate on the owners and occupiers of land as a contribution to the cost of construction of a local road or improvement of a local road from which they will be specially benefited.

114. While Town Planning is outside the scope of our Terms of Reference, we have been impressed during the course of our enquiry by the necessity for Provincial Governments to set up a Central Town Planning Authority for the control of Town Planning. The necessity of such an Authority has been recognised in the United Kingdom and a Ministry of Town and Country Planning created. The Uthwatt Committee based their recommendations on an assumption that this action will be taken.

Failures in British India in respect of Town Planning appear to us to have been largely due to the absence of any such Central Authority or Department. We understand that the Delhi Restriction of Uses of Land Act, 1941 has proved a failure for this reason. It imposes the duty of control on the Deputy Commissioner of Delhi. We have been given to understand that he has neither the time nor the staff to enforce control. Thus in effect control has been ineffective.

In Bombay, on the other hand, there is a Central Town Planning and Valuation Department under a qualified Consulting Surveyor, whose duty it is to assist and supervise local authorities in town planning schemes. As a result the Bombay Town Planning Act, 1915 has been comparatively successful. We understand that the creation of similar departments is in progress in Sind and the Punjab. We recommend the establishment of such departments in all Provinces. The operation of any Act for the control of the use of land for other than agricultural purposes such as we have suggested should then be under the direction of this Department.

PART III

RIBBON DEVELOPMENT AND ACCESS TO HIGHWAYS

CHAPTER VIII.—The Problem

(i) *Ribbon Development*

115. Ribbon Development, as the meaning of the word implies, is the development of buildings in a linear direction without depth resembling a ribbon. Urban development has frequently taken place in India by this method. Buildings have been erected along the sides of the roads leading from towns, and constructed right up to the road boundary, if not over. Frequently such building has taken place outside municipal limits without any measure of control, and without any provision having been made for sanitation and other amenities

116. The advantage of such construction to the builders is that without any expense on road construction they secure access to the highway, and are able to make use of it as a paved open space in front of the building. It is not unusual to find the residents gathering and even sleeping there. When buildings are used as shops the customers stand on the road and transact business. Vehicles conveying goods stand on the road for loading or unloading and often even for resting. Often one of the buildings in this roadside ribbon development forms a school house, and children wander on the highway and even use it as a play-ground. The highway forms the communication from one house to another. These conditions create considerable congestion of traffic on the highway and form the major cause of accidents.

Apart from the traffic congestion and inconvenience to the public thus caused, such ribbon development is harmful to the people themselves. Residents of the houses, especially children, are particularly liable to accidents from passing motor vehicles. The noise and bustle of traffic gives them little rest or privacy, and the road dust becomes a serious danger to their health.

117. The original lay-out of the main roads of India was generally excellent, and had it been maintained, little difficulty would be now experienced in adapting the roads for modern traffic. But, owing to the Ribbon Development which has taken place, all important roads have been seriously obstructed and narrowed in built-up areas so that their adaptation in such areas for modern traffic has presented a formidable problem.

118. The solution generally adopted has been to construct bypasses round built-up areas, or to acquire buildings to a certain depth, and in recent years a number of bypasses have been constructed. The cost has frequently been heavy owing to the comparatively high cost of land in the vicinity of towns. Unfortunately uncontrolled ribbon development has taken place already along such bypasses, and their utility has thus been already seriously impaired.

119. There are certain deltaic areas, such as the bank of the Ganges in Bihar, where water-logged conditions occur a little away from the bank. The highway is taken along a bank on high ground. Linear development along the road naturally takes place. Unless it is controlled, serious obstruction to the highway results.

(ii) *Access to Highways*

120. A further harmful feature of ribbon development is the direct access It gives to the highway from each building. In these days of fast motor traffic, such access is productive of grave danger. A motorist must have a clear view ahead sufficient for him to become aware of cross traffic in good time

to enable him to prepare to avoid it. Uncontrolled access to Highways from the buildings which have resulted from Ribbon Development renders this impossible.

121. A further difficulty in adapting our roads to modern traffic is created by the existence of village tracks and lanes which meet the main road at right angles. From these carts and animals are liable to emerge suddenly on to the road without warning in front of on-coming fast traffic. This is a frequent cause of road accidents.

122. In addition to the obstruction to roads caused by Ribbon Development the objections to it were thus summarised for us by the Provincial Town Planner of the Punjab Government:—

"(i) A large number of access points on to a road interferes with the safety of the highway since such accesses debouch into the highway slow-moving traffic and encourage standing and negotiating vehicles.

(ii) To accommodate the slower moving and standing traffic serving the development adjoining the road, a wider carriage-way than would otherwise be necessary has to be provided and much of the public expenditure on the carriageway is rendered profitless since the effective width is reduced by stationary and slow-moving traffic.

(iii) The countryside adjoining the road is obstructed from view.

(iv) Grouped development is more economical in the provision of public services than ribbon development. The standard of construction of internal estate roads serving grouped development need not be as expensive as that of major traffic roads. The long lengths of sewers necessary for serving ribbon development become eventually of excessive depth and greater cost than a number of shorter grouped lengths.

(v) The development of social life in areas consisting of grouped and well-planned development is more satisfactory than is possible in lineal development."

We agree with him that these objections are valid, and consider that legislation is required to prevent these objectionable consequences, and to prevent the utility of the new roads to be constructed from being impaired as has happened in the past.

CHAPTER IX.—Recommendations for Legislation

123. In para. 16 of our Interim Report we recommended that the Provincial Governments be advised to take early steps to enact legislation to control Ribbon Development embodying the principles of the Delhi Restriction of Uses of Land Act, 1941, the U. P. Roadside Land Control Act, 1945, and the Bombay Ribbon Development Prevention Act, 1946, which was published as a Governor's Act for objections. At the same time we pointed out what appeared to us to be defects in the first two Acts. This recommendation was tentative Having now completed our enquiry, we are now able to make recommendations in more detail.

(i) *Requirements for control for road purposes*

124. In order to prevent the obstruction and congestion of traffic on roads which results from Ribbon Development and the objectionable consequences

from such Development which we have set out as "(i)" and "(ii)" in para. 122 above, we consider it necessary to take power by legislation—

(a) to enforce a building line along specified roads in front of which all building should be prohibited except by or on behalf of the Highway Authority,

(b) to control the use of land behind the building line for other than agricultural purposes up to a prescribed distance in depth from the centre of these roads, and

(c) to control rights of access to such roads.

(a) *Building Line*

125. According to the programme of road construction decided at the Chief Engineers' Conference at Nagpur in December 1943, India is to have at the end of 15 years a total of 400,000 miles including roads of all classes. The Conference laid down the following standard land widths as required for each class of road:—

"——	Width in feet		Remarks
	Normal	Minimum	
National Highways . . .	250	150	Approaches to, or by-passes at, large towns required special treatment.
Provincial Highways . . .	250	100	
District Roads	100	66	
Village Roads	...	25	

The above widths are exclusive of construction borrow pits, which should be on land temporarily acquired or leased."

The widths of actual road formation are laid down as follows.—

"——	In plane width in feet		In hard road cutting width in feet	
	Desirable	Minimum		
National Highway . . .	40	32	26	
Provincial Highway	...	32	26	
District Roads—				where possible."
Major	30	24	22	
Others	...	24	22	
Village Roads	16	12	8	

It appears to us undesirable to acquire such a width of land as is laid down for the standard land widths for maintenance of such road widths. The area of land width for a 10 feet strip per mile comes to 1·21 acres and for the 85,000 miles programmed for National Highways and Provincial Highways the area will be 1,02,850 acres costing about 3·08 crores. Apart from the cost such a large acreage of land will be thrown out of cultivation even for a 10 feet strip.

Apparently the alternative of exercising control over the use of the land on either side of the road widths was not considered. We consider that it is this alternative which should be adopted.

126. For this purpose it will be necessary to determine for each class of highway standard widths necessary for carrying the traffic. It should only be necessary to acquire land for these standard road widths. A building line should then be enforced beyond the road boundary between which and the road boundary all building should be prohibited. The distance of the building line from the road boundary must vary in accordance with both the class of highway and the character of the area through which it passes.

127. We consider that for the purposes of a building line the widths of road land proposed by the Nagpur Conference for National and Provincial Highways are excessive. We suggest the following:—

A. Standard widths of land to be acquired for the maintenance of traffic, and

B. Standard distances from the road boundary for a building line.

A. *Standard Widths*

Roads	Land widths in open areas and agricultural country	Remarks	Land width in urban areas	Remarks
1. National and Provincial Highways.	100 to 180 ft.*	Normal width 100 ft. Greater width upto 180 ft. near towns and industrial areas.	66 to 132 ft.	Width to vary according to town.
2. Major District Roads.	66 to 100 ft.*	Normal width 66 ft. Greater width near towns and industrial areas.	40 to 60 ft.	Do.
3. Minor District Roads and Village Roads.	25 to 40 ft.*	M. D. R. Normal width 40 ft. V. R. 25 ft.	20 to 35 ft.	Do.

B. *Building Line*

1. National and Provincial Highways.	100 ft. from centre of road, or road boundary whichever is greater.	In the case of grain and other markets, factories and other industrial establishments the building line should be the control line.	10 to 15 ft. beyond road boundary.	...
2. Major District Roads.	66 ft. from centre of road, or road boundary whichever is greater.	Do.	Road boundary	...
3. Minor District Roads and Village Roads.	35 ft. from centre of road.	Do.	Road boundary	...

* In all the above cases, widths to be increased by 5 times height of embankment or depth of cutting when these exceed 2 feet.

We propose that power should be taken to prohibit between the building line and the road boundary any erection, re-erection or enlargement of any building, or the making of any permanent excavation, or the construction, formation, or layout of any works, except by or on behalf of the Highway Authority.

(b) *Control of land behind the building line*

128. In the United Kingdom it has been found necessary to take power by the Restriction of Ribbon Development Act, 1935, to control the use of land within 220 feet from the middle of classified roads. While we contemplate that ordinarily building shall be permitted beyond the building line which we have proposed, we consider that it is at the same time very necessary to take power to regulate such building up to a prescribed distance. For instance, if a factory or commercial concern or a godown is to be built along a roadside and this is expected to attract large numbers of bullock-carts, lorries and other vehicles, it is obvious that the minimum width between the road boundary and the structure will have to be considerably more than in the case of residential or other structures which will not cause such crowding of vehicles. We propose the following widths for control along the different classes of road:—

Controlled widths.

Roads	Controlled widths in open areas and agricultural country	Remarks
1. National Highways and Provincial Roads.	220 ft. from centre of road.	...
2. Major Dt. Roads . . .	120 ft. on each side of road.	...
3. Minor Dt. Roads and Village Roads.	60 ft. on each side of centre of road.	...

(c) *Control of Access*

129. Power should also be taken—

(a) to prevent the future construction, formation, or layout of any means of access in the controlled width to or from the road without the permission of the Highway Authority, and

(b) to regulate and divert existing rights of access.

We do not think that it would be proper to take power to close existing rights of access altogether, since they have been permitted to arise. But we think it very necessary that power should be taken to provide alternatives to existing rights of access. In the case of village tracks and lanes the suitable method will be to provide a diagonal approach to the road in place of the existing approach at right angles. It may also be suitable to provide by rule that, when an existing right of access is diverted, the distance at which access is given to the road from the existing point of access shall not be greater than a prescribed distance. What distances should be prescribed must depend on the local circumstances.

130. We consider that legislation to secure these purposes may be included most appropriately in a Highways Act. This is proposed in the Punjab Highways Bill, which was published in February, 1946 for general information.

(ii) *Requirements for control for other purposes*

131. For the purposes of the highway it will not be necessary to control the area behind the controlled width. But such control is necessary to prevent the three last objectionable consequences of Ribbon Development which we have set out in para. 122. We consider that for this purpose separate legislation is required in an Act for the control of land for other than agricultural purposes. In para. 110 of Chapter VII we have expressed the view that the time has arrived when Provincial Governments should take power by legislation to control the use of land for other than agricultural purposes in rural areas. Such power has been taken by the Bihar Restriction of Uses of Land Act (VIII of 1946). We recommend legislation in all Provinces on the lines of this Act.

(iii) *Existing Legislation*

132. We have already mentioned the attempts already made to control Ribbon Development by legislation.

The Delhi Restriction of Uses of Land Act, 1941, and the U. P. Roadside Land Control Act, 1945 take powers of control over notified areas within 440 yards from the centre line of any road. For the purposes of the highway this distance is clearly excessive. At the same time we think that the procedure prescribed in Section 3 of the Acts for notifying an area as a controlled area will make it difficult to prescribe a building line along any specified road or length of road. Further the Savings clauses prevent imposing a building line within any Municipal, Notified, or Town Area in the United Provinces, and within any village Abadi area in both Provinces. We consider it very necessary that Provincial Governments should have the power to impose a building line in such areas along roads maintained by them.

Sections 6 (4) of the Acts prevent refusal of permission to erect or re-erect a building required for purposes subservient to agriculture. This follows similar provisions in the United Kingdom Restriction of Ribbon Development Act, 1935. We understand that these provisions in the United Kingdom Act have operated in effect seriously to impair the utility of the Act as a means to prevent the objectionable consequences of Ribbon Development. We consider that between the building line, which we have proposed, and the road boundary all buildings should be prohibited for whatever purpose intended, except building by or on behalf of the Highway Authority.

Both Acts leave it to the discretion of the Deputy Commissioner or Collector to decide whether to permit building or to refuse permission. Unless a definite building line is prescribed, we think that it will be difficult for these Officers to decide whether building should be permitted or not, and that, for the building line to be effective, there must be an absolute prohibition preventing any building in front of it.

The Acts take power to restrict or regulate new rights of access, but take no power to regulate or divert existing rights of access. We consider this latter power very necessary for adaptation of existing roads to the requirements of modern traffic. Further the Savings clauses prevent any restriction or regulation of the construction of an unmetalled road intended to give access to land solely for agricultural purposes. This prevents control of what in fact are very dangerous rights of access to a modern highway.

From the enquiries that we made at Delhi it appears that the intention of the Delhi Act was to control urban development outside the area of operation of the Improvement Trust. The Act has proved ineffective, as we have pointed out, since it entrusts control to the Deputy Commissioner, and he has no staff for the effective enforcement of control. And for the purposes of such control it appears to us unnecessary to limit the area controlled to any distance from the centre line of any road.

133. The Bombay Ribbon Development Prevention Bill, 1946 takes power to control building within the following distances from the centre line of roads :—

Kind of road	Distance from the centre line of the road	
	Where road falls within *municipal or village panchayat limits*	Where road falls outside municipal or village *panchayat limits*
	Ft.	Ft.
1. National highways . . .	100	200
2. Provincial highways . . .	55	110
3. Major district roads . . .	45	90
4. Minor district roads . . .	45	90
5. Village roads	25	50

The Bill proposes to leave it to the discretion of the Collector whether to grant permission or not. We consider that there should be absolute prohibition of building in front of a prescribed building line.

The Bill makes no provision for restricting or regulating rights of access.

134. By Section 8 of the Punjab Highways Bill, which was published in February, 1946, for general information, power is taken to control building within 220 feet from the middle of any highway maintained by the Provincial Public Works Department or which is Provincial property maintained by local bodies, as well as to restrict or regulate future means of access to or from a highway.

Sections 16 and 17 empower the Highway Authority to determine a building line along a highway. It is left to the discretion of the Highway Authority to permit or refuse building between the building line and the highway. We have explained that in our view for a building line to be effective it is essential that there should be an absolute prohibition of any building, except by or on behalf of the Highway Authority.

The Bill makes no provision for regulation or diversion of existing rights of access

135. The Bihar Restriction of Uses of Land Act, 1946 takes power to control the use of any land in a controlled area for certain purposes, and to declare any land to be a controlled area for the purposes of this Act. The proviso to Section 7 (1) in effect gives power to impose a building line along any road in a controlled area.

136. Our conclusion is that the two questions, the necessity of controlling Ribbon Development for the purposes of the Highway, and the necessity of controlling it for other purposes, should be kept separate and distinct. For the former purpose provision should be made in a Highways Act to exercise the control which we have recommended in para. 124 above. The control should be exercised by the Highway Authority. For the latter purpose provision should be made in an Act for the control of the uses of land for other than agricultural purposes on the lines of the Bihar Restriction of Uses of Land Act (VIII of 1946). Control should be exercised by a Town Planning Authority. We have in para. 114 of Chapter VII stressed the desirability for Provincial

Governments to set up a Central Town Planning Authority for the control of town planning. Administration of such an act should be entrusted to this Authority.

137. We consider that, in order that the public may have clear information both of a building line prescribed and of the boundary of a controlled width, there should be clear demarcation on the spot of both the building line and the controlled width.

(iv) *Compensation*

138. The Delhi and U. P. Acts provide for payment of compensation to any person having an interest in land when this interest is injuriously affected by an order refusing permission to erect or re-erect a building. No compensation is made payable for the effect of any other order of control made under the Act. The provisions for determining the amount of compensation are complicated. We endeavoured to ascertain at Delhi how the provisions in the Delhi Act have worked. We were informed that there has in fact been no case of refusal of permission which has led to a claim to compensation. Thus the provisions have so far been inoperative.

Apparently the intention was to apply the principle of Section 9 of the United Kingdom Restriction of Ribbon Development Act, 1935. We understand that this Section has not in fact worked satisfactorily. Nor do we think that the English principle of compensation for injurious affection can be reasonably applied in India to compensation for restriction of the objectionable consequences of Ribbon Development. In the United Kingdom land is generally held in compact estates or compact portions of an estate. Development for other than agricultural purposes is thus development of an estate or portion of an estate. Thus Section 9 of the United Kingdom Restriction of Ribbon Development Act, 1935, provides for compensation for injurious affection to any estate or interest in land from an order of control under the Act.

In India, however, estates are generally held in shares or in scattered portions, or land is held by plot proprietors. Development of an estate for other than agricultural purposes is rare. Such development usually takes place by sale of specified plots by the owner for use for non-agricultural purposes. Thus restriction of the use of land for Ribbon Development can rarely cause any injurious affection to the development of an estate.

139. The Bombay Bill provides that no compensation shall be payable.

140. The Punjab Highways Bill provides for payment of compensation for any injurious affection resulting from an order of control made under Section 8. The basis of compensation follows the provisions of Section 9 of the United Kingdom Restriction of Ribbon Development Act, 1935.

Section 17 provides for payment of compensation when any existing building is set back to a building line which has been determined under Section 16. No compensation is payable for refusal to permit the erection of a new building in front of the building line.

141. The Bihar Act provides for payment of compensation to any person aggrieved by an order refusing permission to erect or re-erect a building, when his interest in the land concerned is injuriously affected by the order. Section 10 (2) (b) provides that the basis for payment of compensation shall be the difference between the market value of the land as subject to the restrictions imposed by the order refusing permission, and its market value immediately before the publication of the notification of the proposal to declare the area a controlled area. We apprehend difficulty in working this sub-section in view of the definition of "market value" which results from the application by sub-section (3) of the definition of "market value" contained in sub-section (5) of Section 3 of The Schedule.

No compensation is made payable for refusal to grant permission to erect a new building in front of a building line imposed under the proviso to Section 7 (1) of the Act.

142. Applying the principles which we have set out in paras. 9 and 10 of Chapter I, we consider that

> When a building line is imposed, compensation should be payable only for refusal to permit the re-erection of any building in front of it. When re-erection becomes necessary but is not permissible owing to the imposition of a building line, compensation should be payable and be assessed on the basis of the injury caused to the owner of the building by the prevention of re-erection.

143. Behind a building line we contemplate that permission to build will ordinarily be granted subject to conditions. No compensation should be payable for imposing conditions. Ordinarily permission should only be refused on the ground that the proposed work will be prejudicial to the health, safety, or convenience of the public for any purpose. When refusal is based on such a ground, we consider that no compensation should be payable.

When, however, permission is refused on any other ground, then we consider that compensation should be payable, and that it should be assessed on the difference between the market value of the land when permission is refused and the market value which it would have had had permission been granted. It should, however, be provided that no compensation will be payable unless a definite and practicable proposal to build is established.

144. No compensation should be payable for any refusal to permit a new right of access, or for grant of permission subject to restrictions, or for regulation or diversion of existing rights of access.

And no compensation should be payable for any other form of control.

145. We consider that legislation should provide that claims for compensation should be determined by the Collector, or by an Officer exercising the powers of the Collector under the Land Acquisition Act. From the award of the Collector or other Officer there should be a right to claim a reference to the District Court as under Section 18 of the Land Acquisition Act.

PART IV

ENCROACHMENT ON ROADS

CHAPTER X.—Record Maintained of Roads

146. We have been directed to advise on the prevention and removal of encroachment on public lands. We have understood that the reference to "public lands" is particularly to road lands. We have endeavoured to ascertain the record of road lands maintained in each Province.

147. The land of Government roads maintained by the Public Works Department is either—

(i) land which has always been recognised as Crown land;

(ii) land over which a road has been maintained for many years, but the circumstances in which the road was originally constructed are obscure; or

(iii) land which has been acquired compulsorily for the purposes of the road.

In accordance with the instructions issued by Provincial Governments the Public Works Departments are required to maintain road plans of each Government road under their management. We have found, however, in some Provinces that admittedly road plans maintained by the Department of old roads are defective. The necessity for remedying this defect is generally accepted, and in some Provinces action has already been taken for this purpose.

148. Road lands are also recorded in the village land records and maps maintained by the Land Records Departments of the Provincial Governments. Special difficulty frequently occurs in the case of lands which we have placed in categories (i) and (ii) when entries in these records do not correspond with the road plans maintained by the Public Works Department.

In areas where field-war surveys have not been made and only the boundaries of large fields or villages have been surveyed and mapped, the maps are usually on a small scale and the road lands are marked by two parallel lines in the block and only the area occupied by the road is noted in the records. Details showing the width of the road at different points or of the several bends in it are not shown either in the map or records and it is often impossible to trace encroachments, much less to prove them in a court of law, especially when the encroachment covers but a small width.

The Public Works Department maps, however, have been based on a survey carried out by them of the road and preparing in large scale maps showing every bend and giving detail measurements of the width at different places as existed at the time of survey. These, however, have not ben prepared according to law which requires, that notices should be issued to adjoining landowners inviting objections to the details of the survey and rectifying any proved errors after hearing the objections. In the absence of these formalities the survey is not legally binding on the adjoining landowners and hence the Public Works Department plans are not admitted as evidence in a court of law. Nor had steps been taken to incorporate the road plans in the Revenue maps and hence the difficulty in tracing and proving encroachments.

Even in the case of roads coming under Category (iii), wherever the plans of acquisition have not been incorporated in the Land records maps, they are not of much use.

149. We have found general agreement that early action is necessary to secure correspondence between the road plans maintained by the Public Works Department and the record of road lands in the village land records, and in some Provinces action is already being taken to secure this. The particular

methods to be adopted to secure the purpose must vary in accordance with the various land record systems in force in the different Provinces. We may, however, make the general recommendation that, whenever revision of land records is undertaken, the Record Officer or Revising Officer should be specially directed to pay particular attention to secure a correct record of Government road lands in conjunction with the Public Works Department. At the same time the Chief Engineer should be informed whenever revision of records is undertaken, and directed to instruct the local Public Works Department authorities to get in touch with the Record Officer or Revising Officer and secure verification of the survey made with the road plans and removal of discrepancies. In Provinces, in which a partial revision of records can be made under the Land Revenue Code or Survey Act in force, it may be useful as the Post-war Road Programme is undertaken to place the area of the road under Record Operations and secure thus a special record of the road lands to which a statutory presumption of correctness will apply.

150. Where land has been acquired compulsorily for the purposes of the road, there should be no difficulty. The Collector's record of the Land Acquisition proceedings should be maintained permanently and should of course contain detailed plans of the land acquired. Since these plans form part of a public record, they will be accepted by a Court as evidence of the land acquired. The road plans of the Public Works Department should correspond with these plans.

At the same time it is still very necessary that the Collector should take prompt action to secure that necessary record is made of the land acquired in the village land records. If this is not done, there is still a liability to confusion when it is found in a Court that there is discrepancy between the entry in the village land records and the plans.

151. This necessity is recognised clearly in the Land Acquisition Manual of the Bombay Government, Para. 314 of which runs as follows:—

> "It is the experience of all Revenue Officers that much confusion and trouble have been caused in the past by not regarding these corrections of land records as an integral part of the operation of acquisition. Awards have been published and paid, and possession taken, and yet years have elapsed before the proper abatement of assessment is made or the maps are corrected.
>
> * * * * *
>
> No acquisition case should be admitted to the records until it is certain that all these corrections have been carried out."

We consider that the Land Acquisition and Land Records Manuals of the Provinces should contain precise instructions for the necessary correction of the land records when land acquisition has taken place. Action should be taken to this end by the Collector as soon as he takes possession under Section 16 of the Land Acquisition Act.

Correction of the land records will, however, only be possible in Provinces in which annual records are maintained. In Provinces, in which no such records are maintained, it is necessary that immediate and clear demarcation of the land acquired be made on the spot, when the Collector takes possession, by the Collector and the Public Works Department acting conjointly.

152. Local roads maintained by local authorities are either roads formerly maintained by the Public Works Department as Government roads which have been transferred to the management of the local authority, or roads for which the local authority has acquired land. The rules made by the Provincial Governments under the various Acts constituting local authorities generally

require that the local authority shall maintain detailed plans of all roads maintained by it and take necessary action to secure that these plans are kept up-to-date. But we have found that these rules are more frequently ignored than observed. The Madras Government have recently resumed the management of a number of roads from local authorities. We were informed that the road plans received from these authorities have frequently been found to be defective.

153. We recommend that Provincial Governments should take power both to require that local authorities maintain correct road plans of all roads under their management, and to provide for annual inspection of these plans. The Chairman considers that this inspection should be made by a Government Officer and that he should be given powers to secure that any recommendation made by him is carried out. Where necessary, amendment of the Acts constituting local authorities may be undertaken to secure this power.

We also recommend that similar action be taken to secure correspondence between the road plans maintained by local authorities and the village land records to that which we have recommended for Government roads.

154. In some of the Provinces, there are no detailed field-war surveys and only block surveys have been made giving the boundaries of villages or of large estates held by one individual for purposes of assessment. It will be very difficult in such cases by the usual chain survey to exactly locate the road in the field as off-sets from boundaries will be far too long for any accurate measurement. The road survey and the detailed field surveys will have to go together to get an accurate survey of the road fitting with the block survey maps and the cost of this will be considerable and it will take a long time. In such cases for surveying the roads only and to avoid waiting for the general detailed survey the following method may be adopted:—

A number of convenient points within the road boundaries may be marked and the distances between them measured. The contained angle between the lines at every point may be noted by means of a theodolite or circumferentor.

At the place where the line cuts the boundary line of the block survey, the distance from station points on the field boundary line may be noted. The road line may thus be fixed in the Revenue Survey map. The road survey may then be made by taking offsets to the demarcation points from the line as in ordinary chain survey. Road survey somewhat on the above lines may be made and plans got prepared.

In the United Provinces detailed field surveys along with record of rights are being prepared. From the Provincial Land Acquisition Officer, we ascertained that the approximate cost of a legalized road survey on the above lines including demarcation of the road boundary and preparation of road plans will not exceed Rs. 150 per mile including superior establishment, and the survey could readily be made without having to wait for the Revenue Survey.

We recommend such a survey be made of all highways for which there are no authoritative plans at present.

CHAPTER XI.—The Removal of Encroachments

155. If complete and accurate records of road lands are available, no particular difficulty should be experienced in securing removal of encroachments. In the previous Chapter we have pointed out that such records are frequently not available, have emphasised the importance of the preparation of such records, and have made suggestions for securing this. Much of the difficulty experienced in securing the removal of encroachments is due to the lack of such records.

156. The instructions of most Provincial Governments provide for the Chief Engineer to obtain an annual return from each local engineer certifying that the boundaries of the road lands in his charge have been checked, and that either no encroachment has been found or that action has been taken for the removal of any encroachment found. If such annual check is carried out effectively, there should be no encroachments left remaining for any period. But from our enquiry we are led to the conclusion that there is a tendency to treat the annual certificate as formal, and that the annual check is not as effective as it should be. For we have been informed that in fact old encroachments are constantly coming to notice, and the difficulty of obtaining their removal has been explained to us. We recommend that the instructions for an annual check of the boundaries of road lands should be tightened up, and this check made effective.

157. Some Chief Engineers pressed before us that the duty of reporting encroachments should not be regarded as the sole duty of the road engineering staff, but that the local revenue staff should also be given this duty since they are well situated to ascertain at once when an encroachment is made.

We think that the duty of ascertaining and reporting encroachments and securing their removal must be primarily the duty of the staff of the Highway Authority. But we agree that in Provinces, in which a local Land Records staff is maintained, it should also be made a duty of this staff to report encroachments. In some of the Provinces, in which there is this staff, it is already made the duty of the Patwari or Village Accountant to report encroachments. But here again our enquiry has led us to conclude that the performance of this duty is generally perfunctory. We recommend, therefore, that greater emphasis should be laid on the importance of the proper discharge of this duty by the Patwari or Village Accountant, and that it should also be made a duty of the superior Land Records inspecting staff to verify at inspection that the duty is being performed properly.

In some Provinces, in which there is this staff, the Patwari or Village Accountant maintains a list of village boundary marks, and it is a duty of the superior inspecting staff to verify at inspection that the boundary marks are in proper order. We recommend that the boundary marks of road lands should also be included in this list of boundary marks and made subject to similar check.

158. In the case of Local Board roads the Highway Authority is the local authority which maintains the road. The Rules made by the Provincial Governments for the administration of these local authorities generally provide for annual verification of the road boundaries by the engineering staff of the local authority. Here again we have found that this duty is generally not properly performed. We recommend that the Provincial Governments insist upon its proper performance. In para. 153 of the previous Chapter we have recommended that Provincial Governments should arrange for the annual inspection of the road plans of Local Board roads. We recommend that the inspecting officer should be directed also to verify that annual check of the road boundaries is made by the engineering staff of the local authority, and empowered to take necessary action to secure that this is done.

159. We have found general agreement that it is unsuitable to rely on the procedure of a Civil Suit to secure the removal of encroachments, and that some form of summary procedure is required for the purpose. With this view we agree.

In the Madras Province there is a special Land Encroachment Act, III of 1905, in force, providing for the assessment of land revenue by the Collector on

Crown lands occupied without authority or removal of an encroachment made. This Act has been employed successfully for the removal of encroachments from public road lands. For the removal of encroachments on Local Board roads special provision is also made in the Acts constituting the local authority in charge of these roads.

Similarly in Bombay and Sind the Bombay Land Revenue Code contains provisions empowering the Collector to remove encroachments from Crown lands, while the Acts constituting the local authorities provide for removal of encroachments on local roads.

In Assam provision is made in the Assam Highway Act, II of 1928, for the removal of encroachments from Government roads.

We have been informed that in these Provinces the powers to remove encroachments are considered sufficient.

160. In Bengal and Bihar the Highway Acts empower the Provincial Government to make rules for the prevention of encroachments on roads, and the Provincial Governments have made rules prohibiting encroachments But the penalty for making an encroachment in contravention of the rules is only a fine of Rs. 10 with a fine not exceeding Re. 1 per day for a continuing offence, and there is no power to effect removal of the encroachment. These provisions have been found inadequate and ineffective. Consequently recourse is generally had in preference to the provisions of Chapter X of Part IV of the Code of Criminal Procedure.

In the United Provinces and in the Punjab there is no special Act which contains provisions for removal of encroachments on Government roads. Recourse is had to the provisions of Chapter X of Part IV of the Code of Criminal Procedure. The Acts constituting local bodies contain, however, special provisions for the removal of encroachment from local roads.

161. The provisions of Chapter X of Part IV of the Code of Criminal Procedure have been generally found unsatisfactory and ineffective for the removal of encroachments from roads. One reason is the right given by Section 135 to a person against whom an order is made, to apply for appointment of a jury. Section 139 makes the decision of the jury final. Another is that Section 139A empowers the Magistrate to stay proceedings when the proprietary right of the Crown is challenged until the question of the right has been decided by a competent Civil Court. Thus, if a person alleged to have made an encroachment on a public road denies the fact, the Highway Authority may be required by the Magistrate to proceed by a Civil Suit.

162. We consider that in those Provinces, in which the local legislation does not provide adequately for removal of encroachments by summary procedure, provision should be made to this effect in a Highways Act. As to the best provision to be made we have been unable to reach agreement.

163. The Chairman considers that power should be given to the Highway Authority to apply to a magistrate for issue of notice for removal of any encroachment of a permanent nature. For failure to comply with the notice a deterrent penalty should be provided and a further penalty for every day the encroachment continues after levying the first penalty. At the same time the magistrate should be empowered to enforce removal of the encroachment. If the person, to whom notice is issued, claims proprietary right, he should be required to institute a suit in the Civil Court within a stated period to establish his right. The Chairman considers it essential that, when a question of proprietary right is raised, there should be an early and final decision of the question before further action is taken for the removal of the encroachment. The final order of the magistrate should be made then in accordance with the decision of the Civil Court.

Local Acts of the United Provinces empower local boards to issue notice for the removal of encroachments. From his experience of the working of these provisions he does not consider that it will be suitable to empower the Highway Authority itself to issue notice for removal of any encroachment of a permanent nature. The notice should be issued by a magistrate on the report of the Highway Authority. He has found support for this conclusion in some views expressed in certain Provinces of the working of the provisions made in the local Acts of these Provinces empowering local boards to issue notice for removal of encroachments.

164. The Engineer-Member, however, differs from this view and considers that the proper authority to issue the notice to remove encroachment must be the Highway Authority as that Authority is charged with the maintenance of the road in an efficient condition. In a majority of cases the encroachments will be removed without further ado and there will be no occasion to approach a magistrate. When the encroacher fails to comply with the notice then the Highway Authority will prosecute the individual before the magistrate. This system has been found to work quite well in Madras If the Highway Authority should have to apply to a magistrate for the issue of a notice, there may be delay and often entail voluminous correspondence of a needless character. In the Madras Act, XIV of 1920, the authority for issuing notice to remove encroachment was the "Local Board". Even this was amended in Act XI of 1930, Section 139, making the President the authority to issue the notice owing evidently to the delay caused. In the course of our tour we did not interview any Local Board President to ascertain why or how the present Local Board Acts failed, if at all, in their purpose. If in spite of the Local Board having been empowered to issue the notice prompt action was not being taken, the situation will become worse if the Local Board has to approach the District or Sub-divisional magistrate to issue the notice.

165. In 1938, a Highways Bill was drafted for the United Provinces Government, though it appears that the Government have not yet been able to pass the proposed bill into law. Chapter III of the draft Bill contains provisions for the removal of encroachments on highways which the Chairman regards as suitable subject to the following comments. We have, therefore, included this Chapter in Appendix III to this Report.

Section 13 provides for issue of a notice by a Magistrate for removal of an encroachment. Section 14 provides that, if the person to whom notice has been given fails to comply, he shall be liable on conviction by a Magistrate to a fine not exceeding Rs. 500 for every such failure, and, in case of a continuing breach to a further fine which may extend to Rs. 5 for each day of the continuance. It has been suggested to us that the alternative penalty of imprisonment should be provided since it is very necessary that the punishment for making encroachments should be deterrent. We think, however, that a punishment of imprisonment for a first offence would be excessive, but the Chairman considers that the alternative penalty of imprisonment might be provided for a continuing breach.

It is not clear whether the provisions of the draft Chapter intend any right of appeal from an order to remove an encroachment. On the analogy of the provisions of Chapter X of Part IV of the Code of Criminal Procedure the Chairman considers that there should be no right of appeal. It should be sufficient that the High Court would have power of revision under Chapter XXXII of Part VII of the Code of Criminal Procedure as in the case of orders under Chapter X of this Code.

Section 17 provides that, if the person to whom notice has been issued claims proprietary title, the Magistrate shall require him to institute within one month a suit in the Civil Court for the determination of proprietary title.

and shall postpone further proceedings till the decision of the suit. It should be made clear that, if the person does not avail himself of the provisions of this Section he shall not be entitled to institute any suit in the Civil Court subsequently to the final order for removal of the encroachment, either to establish his proprietary title or for recovery of damages. His only remedy in the Civil Court should be by a suit in accordance with Section 17.

Encroachments are sometimes of such an insignificant nature that removal is not necessary and unnecessary hardship is caused by effecting it. We agree that provision should be made for such cases by providing that the Highway Authority may give to the person making an encroachment the option of executing a lease in favour of the Highway Authority for payment of rent with a premium for the area encroached upon in lieu of removing the encroachment.

166. The Secretary Member would commend the procedure adopted in Madras to the Governments of the Provinces in which the existing procedure of removing encroachments is not satisfactory.

In the Madras Province, the Madras District Municipalities Act V of 1920 and the Madras Local Boards Act XIV of 1920 empower the Municipal or Local Boards authorities concerned to require by a notice in writing any encroacher to remove the encroachment within a reasonable time, the only relief to the encroacher being that the District Municipality, or the Local Body should pay compensation to every person who suffers damage by such removal, provided he is able to prove that such encroachment has existed for a period sufficient under the Law of Limitation to give any person a prescriptive title thereto. The abovementioned Acts prescribe penalties for ordinary and continuous breaches of the orders contained in the notices to remove. The party to whom the notice is issued can, however, go to a Civil Court alleging that he has not made any encroachment and that the notice given under the abovementioned Acts is illegal. He may prove either occupation by right or through adverse possession. If it is through adverse possession the period of limitation is 60 years against Government and 30 years against a Local Body under Articles 149 and 146 (A) of the Indian Limitation Act respectively. Under sub-section (2) of Section 2 of Act III of 1905 (The Land Encroachment Act), all public roads and streets vested in any local authority shall for the purposes *of that Act* be deemed to be Crown property; thus if the party cannot show that he has been in occupation of the land either in his own right or by virtue of adverse possession for the required number of years, he will be an encroacher and in addition to the powers given to the Chairman of the Municipal Council and to the President of the Local Board and exercised under Section 339 (2) of the Madras District Municipalities Act and Section 220 (2) of the Local Boards Act respectively, the Collector of the District can also serve a notice under Section 7 of Act III of 1905 on the reputed encroacher to show cause why he should not be evicted under Section 6 of the said Act. The reputed encroacher has a right to appeal to the Collector within 30 days against the order of the Tahsildar or the Deputy Tahsildar passed under Section 6 of the said Act and has a further right of getting redress through a suit in the proper Civil Court, which should be filed within 6 months from date of eviction. The Madras Survey and Boundaries Acts VIII of 1923 and II of 1925 make it easy for the Madras officials to prove encroachments even if the encroacher goes to a Civil Court, wherever the survey is carried out under the provisions of the above Acts.

The Secretary-Member drew the pointed attention of the Revenue and Highway officials in the Provinces visited by the Committee to the provisions of the Madras Survey and Boundaries Acts VIII of 1923 and II of 1925 and to the Madras Encroachments Act III of 1905. These Acts met with the approval of the officers in all the Provinces where it is found difficult to prove

encroachments and evict the encroacher. He would, therefore, recommend the incorporation in a Highways Act provisions similar to those contained in the Madras Acts above referred to. In view of the changed conditions in the political consciousness of the people, he would go further and recommend that the Highway authorities may be empowered if necessary in a Highway Act to issue notices to encroachers to remove encroachments within a reasonable time and to evict encroachers with the help of the police, or the magistracy, if necessary, if the notice is not complied within the time fixed. This will avoid divided responsibility and duplication of work by entrusting the work of detecting and removing encroachments only to the Highways Department.

167. We all agree that the Highway Authority should have the power both to issue notice for removal of encroachments of a temporary nature as well as to effect removal in the event of non-compliance. Provision to this effect is made in Section 6 of the draft Punjab Highways Bill.

PART V

CHAPTER XII.—The Record and Ownership of Village Roads

168. We have been directed to advise generally on the principles to be adopted to enable village roads to be developed without subsequent disputes as to the ownership of the land. We have understood that by such roads is intended all roads and tracks in the rural areas over which the public have a permanent right of way but which are not maintained by the Government or any local authority.

169. Such roads and tracks are shown in the village survey map and recorded in the village land records in accordance with the system of Land Records prevailing in the Province. The boundaries are generally ill-defined. When, therefore, a Provincial Government or a local authority decides to take over a village road for improvement and maintenance, it will be often necessary to acquire land on either side of the existing road or track. In such cases we recommend that similar action be taken to secure authoritative road plans as we have recommended in Part IV for Government roads and local roads.

170. The ownership of the road lands over which village roads pass varies in accordance with the different systems of land tenure prevailing in the Provinces.

Where the Ryotwari system of land tenure prevails, the legal position generally is that the land is Crown land.

Where the Zamindari system of land tenure prevails, the land may be Crown land. But generally the rights of ownership vest in the landlord or proprietary body subject to the public right of passage and, in the case of grants or estates held on special terms, subject to the terms of the grant or conditions on which the estate is held. When the rights of ownership vest in the landlord or proprietary body subject to no specified terms or conditions, the legal position is that the land is deemed to be dedicated to the public for the purposes of passage, and the landlord or the proprietary body retain reversionary rights to resume the land for use if the public right of way ceases. In some Provinces village custom imposes on the landlord or proprietary body the duty of maintaining the village roads in repair for the purposes of passage by the public.

CHAPTER XIII.—Recommendations for the development of village roads by the State

171. When the land of a village road is Crown land, no difficulty will be experienced by the Provincial Government or local authority in assuming control for the purposes of improving and maintaining the road.

172. When, however, rights of ownership of the land vest in the landlord or proprietary body, we consider that statutory provision should be made in a Highways Acts or in the Acts constituting local authorities empowering the Government or the local authority to assume control of the road or track.

Provision should be made that, when the rights of ownership vest in the landlord in accordance with the terms of a grant or the conditions on which the estate is held, regard will be paid to these terms or conditions when the road is taken over.

If reversionary rights vest otherwise in the landlord or proprietary body without any obligation to maintain the road in a state of repair, then we consider that it will be expedient for the Government or local authority to acquire the reversionary rights under the Land Acquisition Act by paying compensation. Provision should be made for this. The compensation payable is likely to be very small as the reversionary right is always very remote.

Where custom imposes on the landlord or proprietary body the duty of maintaining village roads and tracks, over which the public have a permanent right of way, in a state of repair for the purposes of passage by the public, provision should be made giving power to require the landlord or proprietary body to improve the road or track in a specified manner within a specified period. If then the landlord or proprietary body fails to exercise the option to maintain the road in the specified manner retaining the right of ownership of the land, then the Government or local authority should be empowered to assume control. The right of ownership should then vest in the Government or local authority, the compensation to the landlord or proprietary body being relief from any further liability to maintain the road in a state of repair for the purposes of passage by the public. Provision on similar lines is made in the United Kingdom.

CHAPTER XIV.—Summary of Recommendations

173. The following is a summary of our recommendations:—

A. *Amendment of the Land Acquisition Act*

174. Section 3(d) should be amended so as to enlarge the definition of "Court" for the purposes of Part III. The proposal is explained in para. 70.

175. Section 3(f) should be amended so as to provide that the expression "public purpose" includes the acquisition of land for the purposes of Recoupment. We have explained the reasons for this in para. 100.

176. We consider that survey for the purposes of land acquisition should take place after the issue of a notification under Section 4(1), which should be in general terms, and not before. For this purpose Section 5 should be renumbered Section 4(3), and a new Section 5 should be enacted to give an opportunity to persons interested to file objections to the proposed acquisition after survey has taken place in accordance with Section 4(2). Consequential amendments should be made in Section 5A. We have explained the reasons for this recommendation in paras. 15—20.

177. We recommend that the existing Section 17(4) should be incorporated in Section 5A as a sub-section (4) to this Section. The reasons for this are explained in para. 21.

178. We suggest that all notifications under the Land Acquisition Act for the acquisition of land for Post-war Reconstruction Schemes should be published in special Gazette Supplements, headed "Post-war—Land Acquisition for Roads etc."—and not in the usual weekly Provincial Government Gazette. (Para. 25.)

179. We consider that when a declaration is made under Section 6 of an area to be acquired which is less than the area originally notified under Section 4(1), then it should be notified at the same time that this notification is cancelled in respect of the excess area. We have explained this in para. 27.

180. When land in urban areas has to be acquired, and when the revenue experience of the Collector or other Revenue Officer may not be adequate for the purpose, we recommend that when a Provincial Government maintains a special staff for Town Planning and Valuation under a qualified Consulting Surveyor, as is the case in Bombay, the services of a surveyor of the staff may be placed at the disposal of the Collector to assist him in assessing the compensation to be awarded. (Para. 31.)

181. We recommend that, in order that the interests of the Government may not suffer, the record of every land acquisition case should contain an

order sheet which should be maintained by the Collector in his own hand in which should be described shortly but clearly what the Collector has done at each stage at each hearing. (Para. 33.)

182. We also recommend that the departmental authority, at whose instance land is being acquired, should be given an opportunity of being represented during the enquiry and leading evidence and giving assistance in the assessment of compensation. (Para. 34.)

We recommend that Executive Instructions must be issued by all Provincial Governments that notice should always be given to the requiring authority of the date fixed for the enquiry under Section 11, so that this authority may be represented at the enquiry if it so desires. The Collectors should also be directed to accept the assistance of any departmental officer deputed to attend the enquiry and consider any evidence tendered by him in connection with the assessment of compensation.

We also recommend that the Executive Instructions should require that the Collector should inform the requiring authority of the award which he proposes to give, furnishing details, before actually announcing his final award. (Para. 34.)

183. We recommend that a provision on the lines of Section 152 of the Civil Procedure Code be incorporated in the Land Acquisition Act as Section 12-A. It may run as follows:—

> "Clerical or arithmetical mistakes in the award arising therein from any accidental slip or omission may, at any time, be corrected by the Collector either on his motion or on the application of the parties." (Para. 35.)

184. We consider that to require a certificate from the Collector, when reporting a request of the requiring authority that Section 17(1) should be applied, that the land in respect of which the sub-section is to be applied, is waste or arable land is quite unnecessary. (Para. 38.)

185. We recommend the addition of the following Explanation to Section 17(1):—

> "*Explanation.*—The presence of a few stray trees or huts does not operate to make such lands other than waste or arable." (Para. 39.)

If this is accepted, then the Explanation should be included also in the new sub-section (4) for Section 5-A, which we have proposed. (Para. 41.)

186. We consider that Section 17(2) should be made applicable to emergent requirements for keeping roads open to traffic, and have, therefore, proposed the following amendment:—

> After the words "or of providing convenient connection with or access to any such station," insert
>
> "or whenever owing to a like emergency it becomes necessary for the Provincial Government to acquire the immediate possession of any land for the purpose of maintaining traffic over a public road, the Collector may etc." (Para. 40.)

187. We recommend that in those Provinces in which the Land Acquisition Manuals do not contain detailed instructions for the guidance of the Collector in applying the methods for calculating compensation discussed by us in para. 45 to the particular land tenures of the Province, the instructions be amplified by more detailed explanation of both the principles of land acquisition and the operation of the approved methods for determining market value. (Para. 45.)

Section 23(1)

188. We recommend the incorporation in Section 23(1) of the amendments made in the Schedule to the *U. P. Town Improvement Act, 1919*, regarding "market value", but adding to clause (a) a clause on some such lines as this:—

> "For the purpose of determining the market value the court shall take into consideration transfers of land similarly situated and in similar use, and shall not admit evidence that any price actually paid for similar land in similar use contains any element of the potential value of the land transferred for any more lucrative use." (Para. 51.)

189. We recommend that in Land Acquisition Manuals in which there are no clear instructions as to the determination of compensation for potential value, the omission be made good. (Para. 52.)

190. We recommend that the further additions to the first clause of Section 23 contained in Clause 9 of the Schedule to the Calcutta Improvement Act, 1911, *should be adopted generally, as we consider them useful additions.* They are given below:—

> "(d) If the market value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market value shall be deemed to be the market value of the land if put to ordinary uses; and
>
> (e) If the market value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded, and the market value shall be deemed to be the market value of the building if occupied by such number of persons only as can be accommodated in it without risk or danger from overcrowding." (Para. 54.)

191. *We recommend for general adoption the following provision contained* in Clause 10 of the Schedule to the U. P. Town Improvement Act, 1919, as also in the Punjab Town Improvement Act and the Nagpur Improvement Trust Act:—

> "When the owner of the land or building has after the passing of the United Provinces Town Improvement Act, 1919, and within two years preceding the date with reference to which the market value is to be determined, made a return under Section 158 of the United Provinces Municipalities Act, 1916, of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent in the latest return so made, save as the Court may otherwise direct, and the market value may be determined on the basis of such rent;
>
> Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement." (Para. 54.)

192. *Section* 24 (*fifthly*).—We recommend that if our recommendations for the general adoption of clauses (a) and (b) of Clause 10(3) of the Schedule to the U. P. Town Improvement Act, 1919, in the first clause of Section 23(1) is not accepted, this clause should be amended as proposed by the Uthwatt Committee for adoption in the United Kingdom. (Para. 57.)

193. *Section* 24 (A).—We recommend that the following section included in certain Improvement Trust Acts be adopted for general application:—

(1) If, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting the building into such condition or state;

(2) If, in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building, minus the cost of demolishing the building." (Para. 60.)

194. *Section* 31 (3) *and* (4).—The Engineer-Member suggests that Section 31(4) should be so amended so as to render valid and binding any waiver of interested persons before the Collector of a claim to receive payment of the compensation awarded. (Para. 62.)

Chapter IV.—*Reference to Court*

195. We recommend that the words in Section 25(1) "or be less than the amount awarded by the Collector under Section 11," be deleted. (Para. 77.)

We also recommend that provision should be made by a Section 22-A. for a cross-objection to the objection to be made by the Provincial Government, or by a local authority or Company on whose behalf acquisition is being made, and it should be made clear that, if the Court upholds the cross-objection, it may reduce the amount awarded by the Collector.

196. We recommend that provision should be made either to give the Provincial Government, local authority or Company, the right to make a reference to the Court against the Collector's award, or in the alternative that power should be taken to revise the Collector's award. (Paras. 80 and 81.)

197. Section 21 should be amended to secure that the hearing of a reference by the Court is confined to the grounds on which a reference has been claimed in the application made under Section 18(2). This may be secured by adding such words as:—

"and to the grounds on which objection to the award is taken as stated in the application made to the Collector under Section 18(2)". (Para. 84.)

Chapter VI.—*Temporary Occupation of Land*

198. We recommend that for the existing Section 35(2) a sub-section drafted on the lines of Section 4(2) be substituted as follows:—

"(2) The Collector shall thereupon cause public notice of the substance of the direction to be given at convenient places in the locality in which the land is situated. Thereupon it shall be lawful for any officer, either generally or specially authorised by the Collector in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality etc., etc.,"

The existing sub-section (2) should be renumbered (3), and should start as follows:—

"(3) On receipt of plans detailing the land required the Collector shall give notice in writing etc."

The existing sub-section (3) should be renumbered (4).

Executive Instructions which require a plan to be submitted to the Collector and an estimate obtained from him before proceedings under the Part are initiated should be amended suitably. (Para. 93.)

B. *Recommendations to be embodied in a Highways Act.*

199. We recommend that, if necessary, power should be taken in such an Act for officials of the Highway Authority to enter upon lands for reconnoitring and making preliminary surveys in connection with Highway Projects. (Para. 18.)

Prevention of Ribbon Development

200. We recommend that the Highway authority should be empowered to determine the standard widths for different sections of roads and to vary them according to necessity. (Para. 126.)

201. Power should be taken to impose restrictions on the use of land over a specified width on each side of the centre of the road. (Para. 125.).

202. Power should also be taken to notify a building line along important roads and all *new constructions* and re-erection of building should be prohibited in front of the building line. (Paras. 126—128.)

203. We have suggested widths for a building line. (Para. 127.)

204. Behind the building line we have recommended that the use of land for other than agricultural purposes within a specified width on either side from the centre of the road should be controlled, and that construction should be permitted only after obtaining permission.

For the purposes of control, we have suggested widths in para. 128.

205. The building lines and control lines should be demarcated on the ground for the guidance of the public. (Para. 137.)

206. We have made proposals regarding the payment of compensation for control in paras. 141—143.

207. We recommend that new access to highways should be prohibited except with the permission of the Highway Authority, and that power should be taken to divert existing rights of access and provide alternative means of access. (Para. 129.)

We have dealt with the right to compensation in para. 144, and concluded that no compensation is payable.

We do not consider that any exemption should be made in favour of rights of access for agricultural purposes. (Para. 132.)

Encroachments on Road Lands

208. We have found that in some provinces road plans of old roads maintained by the Public Works Department and local authorities are defective. We recommend that, wherever records are defective, road boundaries should be surveyed and plans giving detailed measurements prepared in such a way that the survey made and the plans prepared are legally binding on the public. Also that road boundaries should be properly demarcated by stones or other stable marks. (Paras. 148 and 154.)

209. We recommend that road survey plans should be incorporated in the Land Records and that during every survey at a revision of records special action should be taken to secure reconciliation of the departmental road plans with the land record survey. (Para. 149.)

210. We recommend that, where land has been compulsorily acquired for roads, special care should be taken to secure that the Collector effects necessary entry in the Village Land Records. (Para. 150.)

211. We recommend action to secure that the Highway authority will periodically check road boundaries and take action for removal of any encroachment on road lands. (Para. 156.)

212. We recommend that it shall be made a duty of the Village Patwaris and Land Records staff to report all cases of encroachment on roads. (Para. 157.)

213. We recommend that Provincial Governments should require local authorities to maintain correct road plans of all roads under their management and that provision should be made for annual inspection by an officer to secure this effectively. (Para. 153.)

214. We recommend provision for removal of encroachments by summary procedure. In paras. 163—166 we have suggested alternative forms of procedure for removal of encroachments of a permanent nature, and in para. 167, made a recommendation for removal of encroachments of a temporary nature.

Village Roads

215. We have discussed the rights of ownership in village road lands in Chapter XII of Part V, and in para. 172 of Chapter XIII have recommended provision in a Highways Act or Acts constituting local authorities for power for the Provincial Government or local authority to assume control of these rights.

C. *Proposals for legislation to control the use of agricultural land for other than agricultural purposes*

216. We have discussed in Para. 110 of Chapter III the necessity for legislation to control the use of land for other than agricultural purposes in rural areas, and in paras. 131, 135, and 141—145, we have suggested the lines on which such legislation should be undertaken.

D. *Betterment*

217. We have discussed the various methods of securing a share of betterment in paras. 99—106 of Chapter VII of Part II.

218. For a recovery of a share of the betterment likely to result from the construction of roads in accordance with the Post-war Road Programme we have recommended adoption of the following methods:—

The method of Recoupment. (*Para.* 100.)

In the case of urban areas in which an Improvement Trust or Board is operating, we have recommended that the proposed roads be constructed in co-operation with the Improvement Trust or Board, who should be encouraged to undertake an improvement scheme in connection with the road scheme and thus recover a share of betterment in accordance with the Act applicable to the Trust or Board. (Para. 108.)

In urban areas in which no Improvement Trust or Board is operating, we have recommended levy of a special improvement rate or an enhanced stamp duty on transfers or the adoption of both the methods. (Para. 109.)

In rural areas we have recommended that, when an area is controlled under an Act for the Restriction of the Uses of Agricultural Land for other than

agricultural purposes, a betterment fee or tax should be levied when permission is granted to convert the land for building purposes. (Para. 110.)

219. In para. 111 we have dealt with the question of the share of betterment which should be taken, and in para. 112 we have dealt with the question of what authority should appropriate it.

W. C. DIBLE,
(Chairman).

B. V. SREE HARI RAO NAIDU,
(Secretary-Member).

A. NAGESWARA AIYAR,
(Engineer-Member)

SIMLA,
Dated the 1st June, 1946.

APPENDIX I

Road—Lands Enquiry Committee—Questionnaire.

PART I

General

1. What amendments, if any, have been made in the provisions of the Land Acquisition Act by the Provincial Legislature since it was amended by the Government of India (Adaptation of Indian Laws) Supplementary Order 1937 ?

2. (*i*) Is the Provincial Government prepared to appoint special staff for the purpose of acquiring the land required for the post-war road development schemes ? If not, what staff do they propose to employ for the purpose ?

(*ii*) Do the Provincial Government consider that Clause (*c*) of Section 3 of the Land Acquisition Act and Section 55 give sufficient power to the Provincial Government to employ special staff ? If not, what extra powers are needed ?

3. How long do the Provincial Government estimate that it will take in a district

(*a*) to obtain possession of the land required, and

(*b*) to complete land acquisition proceedings, if

(*i*) special staff is employed ;

(*ii*) no special staff is employed ?

PART II

Defects in the present procedure for the acquisition of land

1. At what stages does delay occur in the acquisition of land under the existing procedure ?

2. What amendments in the Land Acquisition Act do the Provincial Government suggest for reducing existing delays ?

3. *Section 4.*—What particulars of land are given in the notification issued by the Provincial Government under Section 4 (1) ? Is any difficulty experienced in obtaining the necessary particulars ?

4. If difficulties are experienced, what proposals have the Provincial Government to make for removing them ?

5. Do the Provincial Government consider that provision should be made in the Land Acquisition Act for exercise of the powers conferred by Section 4 (2) before a notification is issued under Section 4 (1) ? Would amendment of the Act for this purpose on the lines of the Bill proposed by the Government of Bombay (copy enclosed) be suitable ?

6. *Section 5 (a).*—Does delay occur owing to the provision made in this Section for entertaining objections ? In the experience of the Provincial Government are objections frequently filed under this Section ?

7. Is any difficulty experienced in employing Section 17 (4) ? If so, what proposals have the Provincial Government to make to remove the difficulties ?

8. *Section 9 (3).*—Is it the experience of the Provincial Government that delay is caused owing to the necessity of serving notice on individuals under this clause of the Section ? If so, have the Provincial Government any proposal to make for reducing this delay ?

9. *Section 11.*—What procedure is adopted by the Provincial Government for informing the authority, on whose behalf acquisition is being made, of the day fixed for the enquiry by the Collector under this Section, and giving that authority opportunity to be represented at the enquiry ?

10. *Section 17.*—(*a*) Would the Provincial Government hold that—

(*i*) the commencement of works on the post-war road development schemes ; or

(*ii*) the commencement of works to arrest possible slump tendencies (Government of India Finance Department letter No. F. I (15)-P/45, dated 4th May 1945 and Planning and Development Department letter No. 130/RC dated 11th May 1945) ;
or both

can be regarded as a " case of urgency " for the purpose of this Section ?

(*b*) To what extent, by reason of rulings of the Courts, or of the executive orders of Government, do the words " waste or arable land " in this Section, in practice so restrict the practical application of this Section as to render it of little practical utility ? For example, is it normally held that the existence of

(*i*) fruit or other trees,

(*ii*) a hut or huts,

(*iii*) a well

on any land operates to exclude that land from the application of this Section ?

In this connection attention is invited to the definition of " land " in Section 3 (*a*).

(*c*) What proposals have the Provincial Government to suggest for removing the difficulties experienced in applying this Section ?

11. *Section 17* (*2*).—It has been suggested that this clause should be made applicable also to the acquisition and the immediate possession of land in an unforeseen emergency for the purpose of maintaining traffic over public roads. Do the Provincial Government agree with this suggestion ? If so, what amendment of the clause would they propose ?

PART III

Assessment of Compensation

1. It is understood that the practice is that, before making provision for land acquisition in any estimate, the authority requiring the land applies to the Collector for an estimate of value. Is the procedure for estimating the value of the land at this stage generally satisfactory ?

2. On the basis of past experience does the eventual award normally accord with or exceed the estimates ?

3. If the award frequently exceeds the Collector's estimate, is this due to—

(*a*) defective estimating ; or

(*b*) artificial enhancement of the value of the land by the erection of buildings or by making improvements ; or

(*c*) the creation of fictitious values by " arranged " sales in the neighbourhood ; or

(*d*) undue generosity on the part of the Collector ?

4. In accordance with Section 15 of the Land Acquisition Act read with Section 23 (1), first,—

the compensation to be awarded by the Collector is to represent the market value of the land at the date of the publication of the notification under Section 4 (1).

How is the market value ascertained in the case of—

(*a*) agricultural land, and

(*b*) land other than agricultural land ?

5. It has been suggested that since 1939 the market value of land has been inflated considerably owing to war conditions, and that consequently Section 23 (1) should be amended so as to empower the Collector to take into consideration, not merely the market value at the date of the publication of the notification under Section 4 (1), but also the anticipated variation in land values *not* due to the expenditure of public funds, *e.g.* anticipated fall in values. Do the Provincial Government agree with this suggestion ? If so, what amendment of the Section would they propose ?

6. It has been suggested that, in anticipation of the post-war road development schemes, speculators have been buying up land at artificial and fictitious prices with the object of inflating the market value at the date of the issue of notifications under Section 4 (1). Is it the experience of the Provincial Government that this has been happening in the Province ? If so, to what extent ?

7. If such speculative purchases have been made in the Province, what action do the Provincial Government consider should be taken in order to prevent Government from being forced to pay compensation based on a market value inflated by such speculation ? Do they consider that provision can be made by amending Section 24 of the Land Acquisition Act ? If so, what amendment would they propose ?

8. *Section 31* (*3*) provides an alternative to awarding a money compensation to persons having a limited interest in land. It has been suggested that it is not necessary to confine this alternative to such persons having a limited interest only, but that it should be made available to all persons having any interest in land. Do the Provincial Government agree with this suggestion ?

9. Has any difficulty been experienced in applying Section 31 (4) to an arrangement for the transfer of land to the Collector by agreement, whether by gift or by exchange or otherwise ? If so, what ? If so, what suggestions have the Provincial Government to make for removing these difficulties ? Do the rules made by the Provincial Government impose any restriction on the power of the Collector to enter into an arrangement under this clause ? If so, what ? What is considered the necessity for these rules, if any ?

10. *Section 23* (*2*).—Do the Provincial Government consider that a fixed percentage of 15 for compulsory acquisition is appropriate, or should it be open to the Collector—

(*a*) to make a larger addition in cases where the loss is on account of acquisition intrinsically greater, *e.g.* by fragmentation of an already small holding ; or

(*b*) less, where the execution of the work for which the acquisition is being made will benefit the persons interested ?

11. Do certain provisions of the Act, as for example Sections 25 (1), 27 and 28, encourage persons interested in the land to be acquired to apply for a reference to be made to the Court under Section 18 on flimsy grounds and at little risk except the liability to pay the cost of the reference ? Does this position give rise to liberal awards by the Collector in the hope of avoiding references ? Is amendment of the Act to remedy this position desirable ? If so, what ?

12. It is understood that ordinarily land acquisition proceedings are not conducted by the Collector himself, but by an officer specially appointed under Section 3 (*c*), who is commonly known as the Land Acquisition Officer. What is the extent of the supervision that the Collector exercises over the proceedings of this Officer ?

13. Do the rules made by the Provincial Government under Section 55 provide any restrictions on the amount of compensation which the Collector may award ? If so, what ? Is any degree of supervision or restriction exercised by any superior authority, such as the Board of Revenue or the Commissioner ?

Part IV

References to Court

1. (*a*) The court, to which a reference is to be made under Section 18 (1), is defined in Section 3 (*d*) as a " principal Civil Court of original jurisdiction ". Is it the experience of the Provincial Government that this Court disposes quickly and satisfactorily of all references made ? What is the average duration of the hearing of a reference ?

(*b*) Do the Provincial Government consider it desirable to create a special court or a special tribunal for the hearing of references in connection with acquisition of land for the post-war road development schemes ? If they consider the creation of such a tribunal desirable, how do they propose that this tribunal be constituted ?

2. Section 25 (1) prevents the Court from awarding less than the amount awarded by the Collector under Section 11. It has been suggested that this provision is unreasonable. Do the Provincial Government agree and consider that it should be deleted from the Section ?

3. If the Provincial Government agree to the suggestion of amending Section 25, will they also agree that Section 50 (2) should also be amended, so as to delete the proviso and permit a reference to the Court either by the Provincial Government, or by a local authority or by a Company ?

4. As an alternative to the above suggestion, would the Provincial Government recommend provision of a right of appeal by the Provincial Government from the award of the Collector ? If so, to what authority or court should the appeal lie ?

Part V

Partial Acquisition

1. It is sometimes necessary to acquire land in excess of immediate requirements. In connection with the post-war road development schemes it will be necessary to acquire land for preserving future easement room. Such acquisition may result in putting out of cultivation considerable areas of land that may never be needed for any specific purpose. It is suggested, therefore, that provision should be made in the Land Acquisition Act for partial acquisition in such circumstances, *i.e.*, acquisition outright of rights of ownership to construct buildings, sink wells, or plant fruit trees, leaving unacquired the right of user for cultivation. Do the Provincial Government approve this suggestion, and if so, what amendments in the Act would they propose ?

Part VI

Betterment Values

1. (*a*) It is anticipated that, as a result of the construction of roads under the post-war road development schemes, the value of land adjoining the roads will be greatly increased. Such increase in value is known as " Betterment Value ". How far do the Provincial Government anticipate that betterment value will result from the execution of the proposed schemes ?

(*b*) Do the Provincial Government consider that the State is entitled to recover this betterment value or a share of it ? If so, should it be taken by the Provincial Government or any local authority ? If it is considered proper that a share only should be taken, what share should be taken ?

2. Do the Provincial Government consider that the betterment value should be taken into account at acquisition and deducted from the compensation to be paid in cases where the ownership of the land acquired and of the adjoining land getting the betterment value is the same ? If so, how do they propose that Section 24, *sixthly*, of the Land Acquisition Act should be amended?

3. In the alternative, do the Provincial Government consider that legislation should be undertaken to provide for the imposition of a betterment tax ? If so, would they be prepared to undertake legislation on the lines of Sections 100-106 of the Cawnpore Urban Area Development Act, 1945—U. P. Act No. VI, 1945 (copy enclosed) ?

Part VII

Ribbon Development and Access to Highways

1. It is anticipated that the construction of roads under the proposed schemes will lead to ribbon development along these roads ; in other words, the construction of buildings along the sides of the roads, particularly outside urban areas. How far do the Provincial Government share this anticipation ? Has ribbon development already taken place in the Province to any extent ?

2. Do the Provincial Government agree that steps should be taken to regulate and control such ribbon development ? If so, what steps would they propose ?

3. Are the Provincial Government prepared to undertake legislation on the lines of the United Provinces Roadside Land Control Bill, 1945 (copy enclosed) ?

4. Do the Provincial Government consider it necessary to regulate and control access to the highways proposed for construction from adjoining properties ?

5. If so, what action do they propose should be taken ? Will legislation be necessary ? If so, what form do they recommend that this legislation should take ?

6. Do the Provincial Government consider that, if restriction is imposed on the right of access, it will be necessary to pay compensation ? If so, how should this compensation be assessed ?

Part VIII

Assessment Tribunal

1. Do the Provincial Government consider that the functions of the Collector under the Land Acquisition Act should be entrusted to a specially constituted Assessment Tribunal ? If so, to what extent ?

2. Should such a tribunal also be entrusted with the assessment of betterment values and of compensation for restriction of access to highways ?

3. What should be the composition of such a tribunal ?

4. Do the Provincial Government consider that provision for such a tribunal should be made in the Land Acquisition Act itself, or by special legislation ? In the latter case on what lines should this legislation be undertaken ?

Part IX

Encroachments

1. What record do the Provincial Government maintain of existing roads ? Are boundary marks maintained ?

2. If no records are maintained and no boundary marks, are the Provincial Government prepared to take action now to have records prepared and boundary marks fixed ?

3. What action is taken by the Provincial Government to check encroachments over public roads ?

4. What is the procedure adopted for removal of encroachments ? Is there any difficulty experienced in obtaining the removal ?

What is the nature of such difficulties ?

5. What action do the Provincial Government recommend for removing the difficulties experienced ? Would they recommend amendment of Chapter X of the Criminal Procedure Code for this purpose ? And, if so, what amendments would they propose ? Or do they consider that special legislation is required ? If so, on what lines ?

6. Are any penalties enforced in the Province for making encroachments on public roads ? If so, what ? Have they been found effective ? If not, how do the Provincial Government consider that they should be improved ?

7. If no penalty is enforced in the Province, do the Provincial Government consider that action should be taken to provide a penalty ? If so, what action would they recommend ? Do they consider that provision should be made in the Indian Penal Code ?

Part X

Village Roads

1. What record is maintained in the Province, if any, of village roads and tracks ? Is the record considered adequate ?

2. If no record is maintained or the existing record is considered inadequate, are the Provincial Government prepared to take action now for the preparation of a record ?

3. What are the existing rights of ownership in village roads and tracks ?

4. Is legislation in force in the Province empowering the Provincial Government or any local authority to take over village roads and tracks for maintenance as a public highway ? Is any difficulty experienced in assuming control of village roads and tracks for the purpose of maintaining a public highway ? If so, what ?

5. If no legislation is in existence or difficulties are experienced in working the existing legislation, are the Provincial Government prepared to undertake the necessary legislation to facilitate the acquisition of village roads and tracks for maintenance as a public highway ? If so, on what lines ?

ENCLOSURE I

A Bill to amend the Land Acquisition Act, 1894, in its application to the Province of Bombay.

WHEREAS it is necessary to amend the Land Acquisition Act, 1894, I of 1894 in its application to the Province of Bombay for the purpose hereinafter appearing ;

AND WHEREAS the Governor of Bombay has assumed to himself under the proclamation dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935 (26 Geo. 5, Ch. 2), all powers vested by or under the said Act in the Provincial Legislature ;

NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act :—

1. *Short title.*—This Act may be called the Land Acquisition (Bombay Amendment) Act, 1945.

2. *Insertion of new Part I-A in Act I of 1894.*—After Part I of the Land Acquisition Act, 1894, hereinafter called " the said Act ", the following part shall be inserted, namely :—

" PART I-A.

Preliminary survey

3-A. *Preliminary survey of lands and powers of officers to carry out survey.*—For the purpose of enabling the Provincial Government to determine whether land in any locality is needed or is likely to be needed for any public purpose, it shall be lawful for any officer of the Provincial Government in the Public Works Department, or any other officer either generally or specially authorised by the Provincial Government in this behalf, and for his servants and workmen,—

(*i*) to enter upon and survey and take levels of any land in such locality,

(*ii*) to mark such levels,

(*iii*) to do all other acts necessary to ascertain whether the land is adapted for such purpose, and

(*iv*) where otherwise the survey cannot be completed and the levels taken, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

3-B. *Payment for damage.*—The officer of the Provincial Government in the Public Works Department, and any other officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final ".

3. *Amendment of Section 45 of Act I of 1894.*—In section 45 of the said Act, for the word and figure " Section 4 " the words, figures and letter " section 3-A or 4 " shall be substituted.

4. *Amendment of Section 46 of Act I of 1894.*—In section 46 of the said Act :—

(*a*) after the word " by " the word, figure and letter " section 3-A " shall be inserted ; and

(*b*) after the words " under section " the figure, letter and words " 3-A or section " shall be inserted.

STATEMENT

Under the provisions of the Land Acquisition Act, 1894, a survey of lands can only be undertaken after the publication of a notification under section 4 and it has been found that in many cases the lands originally notified are, after the survey authorised under sub-section (2) of section 4, found to be unsuitable for the purpose for which they were proposed to be acquired, thus necessitating a fresh notification in respect of other lands. This results in delay in land acquisition proceedings. It is essential, particularly in connection with post-war projects, to secure that land acquisition proceedings be completed as expeditiously as possible, and for this purpose it is necessary to authorise the preliminary survey of lands likely to be needed for any public purpose and to empower officers to carry out such survey. This Bill is intended to secure this object.

ENCLOSURE II

'Copy of Sections 100 to 106 of the Cawnpore Urban Area Development Act, 1945—U. P. Act No. VI of 1945

100. *Definition of betterment tax.*—Betterment tax means tax to be charged on the increase in the value of any land comprised in the scheme, but not actually required for the execution thereof or on the increase in the value of any land that is adjacent to and within one quarter of a mile of the boundaries of such scheme, provided that such adjacent land is situated within the area to which this Act applies.

101. *Amount of betterment tax.*—The betterment tax shall be an amount equal to one-half of the difference between the market value of the land on the date of the resolution passed by the Board under Section 103 and the market value of such land on or immediately before the date on which the scheme was finally notified under Section 60:

Provided that for the purposes of the calculation in this Section the land shall be treated as free of all buildings.

102. *Liability to pay tax.*—Every owner of land mentioned in Section 100, or any person having an interest therein in respect of the increase in the value of such land shall, in the manner hereinafter provided, pay to the Board such betterment tax as may be determined by the Executive Officer.

103. *Public notice of betterment tax.*—(1) The Provincial Government shall, after consulting the Board, declare by notification in the Official Gazette the date on which a scheme shall be deemed to have been completed.

(2) When it appears to the Board that a scheme is sufficiently advanced to enable the amount of the betterment tax to be determined, the Board may by a resolution declare that a betterment tax shall be levied from a specified date and shall thereupon give public notice as prescribed in Section 121 that a betterment tax shall be levied from such date, provided that the Board shall not pass the resolution later than the date of the notification specified in sub-section (1).

104. *Assessment of betterment tax and filing of objections.*—The Executive Officer shall at any time after one month from the publication of such notice assess the amount of betterment tax payable by the person concerned, and shall give a notice in writing to such person stating the amount of tax, the instalments, if any, in which, and the dates on which, the tax shall be paid together with such other particulars as may be necessary.

(2) Any person on whom a notice of assessment is served under sub-section (1) may within one month from the date of the service of such notice file an objection against such assessment before the Executive Officer:

Provided that the objection may be entertained even after the expiry of the period mentioned in this sub-section if the President is satisfied that the failure to file objections was due to causes beyond the control of the objector.

(3) After an opportunity has been given to the objector of being heard, the President shall decide the objection, and may confirm, modify, or cancel the assessment.

(4) Any person aggrieved by the order of the President under sub-section (3) may within one month from the date of such order apply to the Tribunal for the reconsideration of the order, and subject to the decision of the Tribunal the order of the President shall be conclusive.

(5) If the person on whom a notice of assessment is served under sub-section (1) fails to file any objection under sub-section (2), the order of assessment shall be conclusive and shall not be questioned in the Tribunal or any other court of law.

105. *Agreement to make payment of betterment tax an annual charge on land.*—(1) A person liable to pay betterment tax may, at his option, instead of making a payment thereof to the Board execute an agreement with the Board to leave the said payment outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at the rate of 6 per cent per annum.

(2) A person who has exercised his option under subsection (1) may at any time, subject to his giving six months notice of his intention, pay the amount of betterment tax assessed under Section 104.

106. *Realisation of betterment tax.*—Arrears of betterment tax shall be realized in the manner provided in chapter VI of the Municipalities Act.

PART VII

(a) Bills introduced in the Provincial Legislature or published before introduction.

(b) Reports of Select Committees.

Public Works Department August 27, 1945.

No. 1466-C/39-C-44.—The following draft of a Bill which the Governor of the United Provinces proposes to enact, in exercise of the powers assumed by him by the Proclamation dated the third day of November, 1939 promulgated under section 93 of the Government of India Act, 1935, together with the Statement of Objects and Reasons, is published for the information of all persons likely to be affected thereby; and notice is hereby given that the draft will be taken into consideration on or after the 1st of October, 1945.

Any objection or suggestion which may be received from any person with respect to the said draft, before the date specified above, shall be considered by the Governor. All objections and suggestions to the said Bills should be addressed to the Secretary to the Government, United Provinces, in the Public Works Department.

By order,

H. HUSSAIN, *Secretary.*

ENCLOSURE III

THE UNITED PROVINCES ROADSIDE LAND CONTROL BILL, 1945.

Preamble.—Whereas it is expedient to regulate in the United Provinces the use of roadside land:

AND WHEREAS by the Proclamation, dated the third day of November, 1939, promulgated under Section 93 of the Government of India Act, 1935, the Governor of the United Provinces has assumed to himself all powers vested by or under the aforesaid Act in the Provincial Legislature;

AND WHEREAS the said Proclamation is still in force:

NOW, THEREFORE, the Governor, in exercise of the powers aforesaid, is pleased to make the following Act:—

1. *Short title, extent and commencement.*—(1) This Act may be called "the United Provinces Roadside Land Control Act, 1945."

(2) It extends to the whole of the United Provinces except cantonment areas.

(3) It shall come into force on such date as the Provincial Government may, by notification in the official Gazette, appoint.

2. *Interpretation.*—In this Act, unless there is anything repugnant in the subject or context,—

(1) "Agriculture" includes horticulture and the planting and upkeep of orchards;

(2) "Building" means a house, hut, shed or other roofed structure, for whatsoever purpose and of whatsoever material constructed, and every part thereof, and includes a wall or masonry platform or masonry ditch or drain, but does not include a tent or other such portable and merely temporary shelter;

(3) "District Magistrate" includes any authority appointed by the Provincial Government, by notification in the official Gazette to perform all or any of the functions of the District Magistrate under this Act;

(4) "Place of worship" includes a temple, church, mosque, imambara, dargah karbala, takya, samadhi, math, sati ka than or gurdawara;

(5) "Prescribed" means prescribed by rules made under this Act; and

(6) "Road" means a metalled road maintainted or demarcated with a view to construction by the Provincial Government or by a local authority.

3. *Declaration of Controlled area.*—(1) The Provincial Government may, by notification in the official Gazette, declare any land adjacent to and within a distance of four hundred and forty yards from the centre line of any road to be a controlled area for the purposes of this Act.

(2) Not less than three months before making a declaration under sub-section (1) the Provincial Government shall cause to be published in the official Gazette, and in at least two newspapers printed in a language other than English a notification stating that they propose to make such a declaration and specifying therein the boundaries of the land in respect of which the declaration is proposed to be made, and copies of every such notification or of the substance thereof shall be published by the District Magistrate in such manner as he thinks fit at his office and at such other places as he considers necessary within the said boundaries.

(3) Any person interested in any land included within the said boundaries may, at any time before the expiration of thirty days from the last date on which a copy of such notification is published by the District Magistrate, object to the making of the declaration or to the inclusion of his land or any part of it within the said boundaries.

(4) Every objection under sub-section (3) shall be made to the District Magistrate in writing, and the District Magistrate shall give to every person so objecting an opportunity of being heard either in person or through a legal practitioner, and shall after all such objections have been heard and after such further inquiry, if any, as he thinks necessary, forward to the Provincial Government the record of the proceedings held by him together with a report setting forth his recommendations on the objections.

(5) If before the expiration of the time allowed by sub-section (3) for the filing of objections no objection has been made, the Provincial Government may proceed at once to the making of a declaration under sub-section (*i*). If any such objections have been made, the Provincial Government shall consider the record and the report referred to in sub-section(4) and may either—

(*a*) abandon the proposal to make a declaration under sub-section (*i*), or

(*b*) make such a declaration in respect of either the whole or a part of the land included within the boundaries specified in the notification under sub-section (2).

(6) For the purposes of sub-section (3) a person shall be deemed to be interested in land if he is a " person interested " as defined in clause (*b*) of section 3 of the Land Acquisition Act, 1894, for the purposes of that Act or, where the land is land occupied by or for the purposes of a place of worship, tomb, cenotaph, or graveyard, if he is a member of the faith to which such building pertains.

(7) A declaration made under sub-section (*i*) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the area to which it relates is a controlled area.

4. *Plans of controlled areas to be deposited at certain offices.*—(1) The District Magistrate shall deposit at his Office and at such other places as he considers necessary plans showing all lands declared to be controlled areas for the purposes of this Act, and setting forth the nature of the restrictions applicable to the land in any such controlled area.

(2) The plans so deposited shall be available to the public for inspection free of charge at all reasonable times.

5. *Restrictions on building, etc., in a controlled area.*—Notwithstanding anything contained in any other law for the time being in force, no person shall erect or re-erect any buidling, or make or extend any excavation, or lay-out any means of access to a road in a controlled area except with the previous permission of the District Magistrate in writing.

6. *Application for permission to build, etc., and the grant of refusal of such permission.*—(1) Every person desiring to obtain the permission referred to in section 5 shall make an application in writing to the District Magistrate in such form and containing such information in respect of the building, excavation or means of access to which the application relates as may be prescribed.

(2) On receipt of such application the District Magistrate after making such inquiry, as he considers necessary, shall, by order in writing, either :—

(*a*) grant the permission, subject to such conditions, if any, as may be specified in the order ; or

(*b*) refuse to grant such permission.

(3) When the District Magistrate grants permission subject to conditions under clause (*a*) of sub-section (2) or refuses to grant permission under clause (*b*) of sub-section (2) the conditions imposed or the grounds of refusal shall be such as are reasonable having regard to the circumstances of each case.

(4) The District Magistrate shall not refuse permission to the erection or re-erection of a building, not being a dwelling house, if such building is required for purposes subservient to agriculture, nor shall the permission to erect or re-erect any such building be made subject to any conditions other than those which may be necessary to ensure that the building will be used solely for the purposes specified in the application for permission.

(5) The District Magistrate shall not refuse permission to the erection or re-erection of a building which was in existence on the date on which declaration under sub-section (1) of section 3 was made, nor shall he impose any conditions in respect of such erection or re-erection unless it involves the addition of one or more storeys to the building or the extension of the plinth area of the building by more than one-eighth of the original plinth area, or there is a probablity that the building will be used for a purpose other than that for which it was used on the date on which the said declaration was made.

(6) If at the expiration of a period of three months after an application under sub-section (1) has been made to the District Magistrate no order in writing has been passed by the District Magistrate permission shall be deemed to have been given without the imposition of any conditions.

(7) The District Magistrate shall maintain a register with sufficient particulars of all permissions given by him under this section and the register shall be available for inspection without charge by all persons interested and such persons shall be entitled to take extracts therefrom.

7. *Right of Appeal.*—(1) Any person aggrieved by an order of the District Magistrate under sub-section (2) of section 6 granting permission subject to conditions or refusing permission may within thirty days from the date of such order prefer an appeal to the Provincial Government.

(2) The o der of the Provincial Government on appeal shall be final.

8. *Compensation.*—(1) No person shall be entitled to claim compensation under this or any other Act for any injury, damage or loss caused or alleged to have been caused by an order—

(*a*) refusing permission to make or extend an excavation, or granting such permission but imposing conditions on the grant, or

(*b*) refusing permission to lay-out a means of access to a road, or granting such permission but imposing conditions on the grant, or

(*c*) granting permission to erect or re-erect a building but imposing conditions on the grant.

(2) When an order has been made refusing permission to erect or re-erect a building any person who has exercised the right of appeal given by sub-section (1) of section 7 may, within three months of the date of the order of the Provincial Government, make to the Provincial Government a claim for compensation on the ground that his interest in the land concerned is injuriously affected by the said order.

(3) On receipt of a claim under sub-section (2) the Provincial Government shall either proceed to acquire the land concerned under the Land Acquisition Act (I of 1894), or transfer the claim for disposal to an officer exercising the powers of a Collector under the said Act:

Provided that in case the Provincial Government decide to acquire the land, (*i*) it shall not be necessary for land occupied by a place of worship, tomb, cenotaph or graveyard to be included, and (*ii*) the claimant shall be entitled to be repaid by the acquiring authority the amount of expense which he may have properly incurred in connection with the preparation and submission of his claim for compensation under this section, and in default of agreement such amount shall be determined by the authority deciding the value of the land in the proceedings under the Land Acquisition Act, 1894.

(4) Nothing in this section shall be deemed to preclude the settlement of a claim by mutual agreement.

9. *Compulsory acquisition.*—If the Provincial Government decide to acquire the land under the Land Acquisition Act, 1894 (I of 1894), then notwithstanding anything contained in that Act:—

(*i*) proceedings under section 5A of that Act shall not be required;

(*ii*) the notification under section 6 of that Act shall be published within six months from the date of institution of the claim, failing which the claim shall be transferred for disposal to an officer exercising the powers of a Collector under that Act;

(*iii*) the market value of the land shall be assessed in accordance with the provisions of the Land Acquisition Act, 1894 (I of 1894), which shall, for the purposes of this Act, be deemed to be modified as indicated in the Schedule annexed to this Act.

10. *Amount of compensation how determined.*—(1) When a claim is transferred for disposal under section 8 or section 9 to an officer exercising the powers of a Collector under the Land Acquisition Act, 1894 (I of 1894), such officer shall make an award determining the amount of compensation if any, payable to the claimant.

(2) The amount of compensation awarded under sub-section (1) shall in no case exceed:—

(*a*) the amount that would have been payable if the land had been acquired under section 9, or

(*b*) the difference between the market value of the land in its existing condition having regard to the restriction actually imposed upon its use and development by the order refusing permission to erect or re-erect a building thereon, and its market value immediately before the publication under sub-section (2) of section 3 of the notification in pursuance of which the area in which it is situated was declared to be a controlled area, and no compensation shall be awarded under sub-section (1)—

(*i*) unless the claimant satisfies the officer making the award that proposals for the development of the land which at the date of the application under sub-section (1) of section 6 are immediately practicable, or would have been so, if this Act had not been passed, are prevented or injuriously affected by the restrictions imposed under this Act, or

(*ii*) if and in so far as the land is subject to substantially similar restrictions in force under some other enactment which were so in force at the date when the restrictions were imposed under this Act, or

(*iii*) if compensation in respect of the same restrictions in force under this Act or of substantially similar restrictions in force under some other enactment has already been paid in respect of the land to the claimant or to any predecessor in interest of the claimant.

(3) The provisions of Part III, as modified by section 9, clause (*iii*) and the Schedule annexed to this Act, and Parts IV, V and VIII of the Land Acquisition Act, 1894 (I of 1894), shall so far as may be apply to an award made under sub-section (1) as though it were an award made under that Act.

11. *Saving for other enactments.*—Nothing in this Act shall affect the power of any authority to acquire land or to impose restrictions upon the use and development of land under any other enactment for the time being in force.

12. *Prohibition of use of any land as a brick-field etc., without a license.*—(1) Notwithstanding anything contained in any other law for the time being in force, no land within a controlled area shall be used for the purposes of a charcoal-kiln, or lime-kiln and no land within a controlled area shall be used for the purposes of a brick-field or brick-kiln except under, and in accordance with, the conditions of a licence from the District Magistrate which shall be renewable annually.

(2) The Provincial Government may charge such fees for the grant and renewal of such licences and may impose such conditions in respect thereof as may be prescribed.

(3) No person shall be entitled to claim compensation under this or any other Act for any injury, damage or loss caused or alleged to have been caused by the refusal of a licence under sub-section (1).

13. *Offences and penalties.*—(1) Any person who (*a*) erects or re-erects any building or makes or extends any excavation or lays out any means of access to a road in contravention of the provisions of section 5 or in contravention of any conditions imposed by an order under section 6 or section 7, or

(*b*) uses any land in contravention of the provisions of sub-section (1) of section 12, shall be punishable with fine which may extend to five hundred rupees and, in the case of a continuing contravention, with a further fine which may extend to fifty rupees for every day after the date of the first conviction during which he is proved to have persisted in the contravention.

(2) Without prejudice to the provisions of sub-section (1) the District Magistrate may order any person who has committed a breach of the provisions of the said sub-section to restore to its original state or to bring into conformity with the conditions which have been violated, as the case may be, any building on land in respect of which a contravention such as is described in the said sub-section has been committed and if such person fails to do so within three months of the order, may himself take such measures as may appear to him to be necessary to give effect to the order and the cost of such measures shall be recoverable from such person as an arrear of land revenue.

14. *Trials of offences.*—No court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act.

15. *Protection of persons acting under this Act.*—No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

16. *Savings.*—Nothing in this Act shall apply to :—

(*a*) the erection or re-erection of buildings upon land included in the inhabited site of any village as entered and demarcated in the revenue records or upon sites in a municipal, notified, or town area that are already built up on the date of the issue of the notification under sub-section (2) of section 3 of this Act;

(*b*) the erection or re-erection of a place of worship or a tomb or cenotaph or of a wall enclosing a graveyard, place of worship, or cenotaph on land which is, at the time a notification under sub-section (2) of section 3 is published by the Provincial Government, occupied by or for the purposes of such place of worship, tomb, cenotaph or graveyard;

(*c*) excavations (including wells) made in the ordinary course of agricultural operations;

(*d*) the construction of an unmetalled road intended to give access to land solely for agricultural purposes.

17. *Power to make rules.*—(1) The provincial Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely :—

(*a*) the form in which the applications under sub-section (1) of section 6 shall be made and the information to be furnished in such applications;

(*b*) the regulation of the laying out of means of access to roads;

(*c*) the fees to be charged for the grant and renewal of licence under section 12 and the conditions governing such licences.

(3) All rules made under this section shall be subject to the condition of previous publication in the official Gazette and the date to be specified under clause (3) of section 23 of the United Provinces General Clauses Act, 1904, shall not be less than two months from the date on which the draft of the proposed rules was published.

THE SCHEDULE

[Referred to in section 9 (*iii*)]

Modification in the Land Acquisition Act, 1894

(Hereinafter called "The Said Act")

1. *Amendment of section 15.*—In section 15 of the said Act, for the word and figures "and 24" the figures, word and letter "24 and 24-A" preceded by a comma, shall be deemed to be substituted.

2. *Amendment of section 17.*—In sub-section (3) of section 17 of the said Act, after the figures "24" the words, figures, and letter "or section 24-A" shall be deemed to be inserted.

3. *Amendment of section 23.*—(1) In clause first and clause sixthly of sub-section (1) of section 23 of the said Act, for the words "publication of the notification under section 4, sub-section (1)" and the words "publication of the declaration under section 6" the following words shall be deemed to be substituted, namely, "publication of the notification under sub-section (2) of section 3 of the United Provinces Roadside Land Control Act, 1945".

(2) At the end of section 23 of the said Act, the following shall be deemed to be added, namely:—

"(3) For the purpose of clause first of sub-section (1) of this section:—

(*a*) the market-value of the land shall be the market value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause;

(*b*) if it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him;

(*c*) if any person, without the permission of the District Magistrate required by section 5 of the United Provinces Roadside Land Control Act, 1945 (U. P. Act 1945), has erected, re-erected, added to or altered any building, then any increase in the market-value resulting from such erection, re-erection, addition or alteration shall be disregarded;

(*d*) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under this Act;

(*e*) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if put to ordinary uses; and

(*f*) when the owner of the land or building has after passing of the United Provinces Roadside Land Control Act, 1945, U. P. Act II of 1945 and within two years preceding the date with reference to which the market-value is to be determined, made a return under section 158 of the United Provinces Municipalities Act, 1916 (U.P. Act II of 1940), of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court may otherwise direct, and the market-value may be determined on the basis of such rent:—

Provided that where any addition to, or improvement of the land or building has been made after the date of such latest return and previous to the date with reference to which the market-value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement.

4. *Amendment of section 24.*—For clause seventhly of section 24 of the said Act, the following shall be deemed to be substituted, namely,—

"Seventhly, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

5. *New section 24-A.*—After section 24 of the said Act the following shall be deemed to be inserted, namely—

"*24-A. Further provision for determining compensation.*—In determining the amount of compensation to be awarded for any land acquired under this Act, the Court shall also have regard to the following provisions, namely:—

(1) when any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no seperate

estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land :

(2) if, in the opinion of the Court, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the court considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state;

(3) if, in the opinion of the Court, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation the amount of compensation for such building shall not exceed the value of the materials of the building minus the cost of demolishing the building."

STATEMENT OF OBJECTS AND REASONS

There is a growing tendency to extend building along roads around towns with the consequence that congestion on such roads is becoming acute. Roads intended to enable through traffic to bypass centres of dense population themselves become too crowded. Extra-Municipal areas adjoining main roads have obvious attractions as building sites ; the occupants of buildings in such areas can enjoy many of the amenities of town life without sharing the burden of municipal taxation or being subject to the control required to ensure sanitation and well ordered development. At present there is no legal power for the control of such extensions. In 1938, the United Provinces Highways Bill was framed, one of the chapters of which dealt with the regulation of "ribbon development". The Bill, however, could not be enacted by the late Government before it vacated office. The Chief Engineer's conference held at Nagpur in December, 1943 to consider post-war road development in India stressed the necessity for early enactment of legislation to prevent "ribbon developmennt". The problem of "ribbon development" is becoming more serious day by day, and with the large programme of post-war improvement of road communication that is now contemplated it is desirable that the evil should be tackled without further delay.

2. The Bill also includes provision for the regulation of excavations and approach roads and for the control, by means of licences, of the use of land for brickfields and kilns, unregulated excavations, *e.g.*, in connection with brickfields, not only result in the creation of breeding places for malaria-carrying mosquitoes but also frequently render future development of the land for building purposes impossible without expensive levelling operations.

3. This Bill enables the necessary control to be exercised over areas adjacent to main roads in the United Provinces, except in cantonment areas. It has been modelled on the similar measures introduced in 1941 in Delhi Province, which has so far worked smoothly.

APPENDIX II

Important Amendments made by Provincial Legislatures to the Land Acquisition Act, 1894

(i) *Amendments of general application.*

BENGAL

For Section 3 (*d*) has been substituted :—

" (*d*) *Land Acquisition (Bengal) Amendment Act, 1931.*—The expression ' Court ' means a principal Civil Court of original jurisdiction, and includes the Court of any Additional Judge, Subordinate Judge or Munsif whom the (Provincial Government) may appoint, by name or by virtue of his office, to perform, concurrently with any such principal Civil Court, all or any of the functions of the Court under this Act within any specified local limits and, in the case of a Munsif, up to the limits of the pecuniary jurisdiction with which he is vested under Section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887 ".

BOMBAY

(*i*) *Land Acquisition (Bombay Amendment) Act, 1938.*—In Sections 28 and 34, for the word " six " the word " four " has been substituted.

(*ii*) *Land Acquisition (Bombay Amendment) Act, 1945.*—The following Part I-A has been added :—

" Preliminary Survey "

" 3A. *Preliminary survey of lands and powers of officers to carry out survey.*—For the purpose of enabling the Provincial Government to determine whether land in any locality is needed or is likely to be needed for any public purpose, it shall be lawful for any officer of the Provincial Government in the Public Works Department, or any other officer either generally or specially authorised by the Provincial Government in this behalf, and for his servants and workmen,—

(*i*) to enter upon and survey and take levels of any land in such locality,

(*ii*) to mark such levels,

(*iii*) to do all other acts necessary to ascertain whether the land is adapted for such purpose, and

(*iv*) where otherwise the survey cannot be completed and the levels taken, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

3B. *Payment for damage.*—The officer of the Provincial Government in the Public Works Department, and any other officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final ".

(ii) *Amendments of local application*

BENGAL

(1) *The schedule to the Calcutta Improvement Act, 1911.*

(*i*) The following additions have been made to Section 17 :—

" (4) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by a salaried Presidency Magistrate or a Magistrate of the first class to be unhealthy.

" (5) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of Section 9 and shall hear without any avoidable delay any objections which may be urged by them.

" (6) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensations shall be paid to such person for such dispossession ".

(*ii*) To Section 23 has been added the following Sub-section (3) :—

" (3) For the purposes of clause first of Sub-section (1) of this section,—

(*a*) the market value of the land shall be deemed to be the market-value according to the disposition of the land at the date of the publication of the declaration relating thereto under section 6 ;

(*b*) if it be shown that, before such declaration was published, the owner of the land had taken active steps and incurred expenditure to secure a more profitable disposition of the same, further compensation, based on his actual loss, may be paid to him ;

(*bb*) if the market-value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded ;

(*bbb*) *Bengal Act V of 1911.*—if any person, without the permission of the Chairman required by section 63, sub-section (8), of the Calcutta Improvement Act, 1911, has erected, re-erected or added to any wall (exceeding ten feet in height) or building within the street alignment or building line of a projected public street, then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded ;

(*c*) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the aforesaid declaration was published such increase shall be disregarded, unless it be proved that the improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land being taken under this Act :

(*d*) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary uses ; and

(*e*) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding ".

(*iii*) The following Section 24 A has been added :—

" 24A. In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions, namely :—

(1) When any interest in any land acquired under this Act has been acquired after the date of the publication of the declaration under Section 6, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;

(2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state ;

(3) if, in the opinion of the Tribunal, any building, which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, minus the cost of demolishing the building ".

(2) Similar amendments and additions have been incorporated in the Calcutta Municipal Act, 1923.

BOMBAY

(*i*) In Section 354T of the City of Bombay Municipal Act, 1888, the following special provisions have been made applicable to the application of the Land Acquisition Act :—

" In determining the amount of compensation to be awarded for any land or building acquired under this Act, the following further provisions shall apply :—

(1) The Court shall take into consideration any increase to the value of any other land or building belonging to the person interested likely to accrue from the acquisition of the land or from the acquisition, alteration or demolition of the building ;

(2) When any addition to, or improvement of, the land or building has been made after the date of the publication under sub-section (1) of section 354G or section 354P of a notification relating to the land or building, such addition or improvement shall not (unless it was necessary for the maintenance of the building in a proper state of repair) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made, so as to increase the amount of compensation to be paid for the land or building ;

(3) in estimating the market-value of the land or building at the date of the publication of a notification relating thereto under sub-section (1) of section 354G or section 354P the Court shall have due regard to the nature and the condition of the property and the probable duration of the building if any in its existing state and to the state of repair thereof and to the provisions of clauses (4), (5) and (6) of this section ;

(4) if in the opinion of the Court the rental of the land or building has been enhanced by reason of its being used for an illegal purpose, or being so overcrowded as to be dangerous or injurious to the health of the inmates, the rental shall not be deemed to be greater than the rental which would be obtainable if the land or building were used for legal purposes only, or were occupied by such a number of persons only as it was suitable to accommodate without risk or such overcrowding;

Explanation.—For the purpose of this sub-section overcrowding shall be interpreted as in sub-sections (4) and (5) of section 379A;

(5) if in the opinion of the Court the building is in a state of defective sanitation, or is not in reasonably good repair the amount of compensation shall not exceed estimated value of the property after the building has been put into a sanitary condition or into reasonably good repair, less the estimated expense of putting it into such condition, or repair;

(6) if in the opinion of the Court the building being used or intended or likely to be used for human habitation is not reasonably capable of being made fit for human habitation, the amount of compensation for the building shall not exceed the value of the materials less the cost of demolition.

(*ii*) Section 354S (3) modifies the additional compensation to be paid in accordance with Section 23 (2) of the Land Acquisition Act, in accordance with the following scale in Schedule DD :—

" *SCHEDULE DD

(*See* Section 354S)

Scale of additional compensation for compulsory acquisition for improvement purposes.

1	2
Amount of compensation awarded	Percentage to be allowed in addition under Section 354S
NOT exceeding ten thousand rupees, or, if the amount exceed ten thousand rupees for the first ten thousand	Six per cent.
Exceeding ten thousand, but not exceeding fifty thousand, for the amount by which it exceeds ten thousand	Four per cent.
Exceeding fifty thousand rupees, but not exceeding one lakh, for the amount by which it exceeds fifty thousand	Three per cent.
Exceeding one lakh, for the amount by which it exceeds one lakh	Two and a half per cent.

*This schedule was inserted by Bombay 13 of 1933, s. 37.

MADRAS

(*i*) Section 35 (3) of the Town Planning Act, 1920, has added the following two clauses to Section 24 of the Land Acquisition Act :—

"(*g*) any outlay or improvements on, or disposal of, the land acquired which, having regard to the time at which they were made and other circumstances, appear to have been commenced, made or effected with intent to obtain increased compensation;

(*h*) the special suitability or adaptability, if any, of the land for any purpose, if that purpose is one to which it could be applied only in pursuance of statutory powers or for which there is no market apart from the special needs of a particular purchaser or the requirements of a Government department or any local or public authority."

(*ii*) Sections 6 (3) and 8 of the Schedule to the City of Madras Improvement Trust Act, 1945, have added to Section 23 of the Land Acquisition Act clauses similar to clauses (*c*), (*d*), (*e*) added by the Schedule to the Calcutta Improvement Act, 1911, and have added a new Section 24A similar to Section 24A added to this Schedule.

UNITED PROVINCES

(1) The Schedule to the United Provinces Town Improvement Act, 1919, has made the following amendments :—

(*i*) By Section 5 additions have been made to Section 17 of the Land Acquisition Act, similar to the additions made in the Schedule to the Calcutta Improvement Act, 1911.

(*ii*) By Section 10 (3) the following amendments have been made to Clause first of sub-section 1 of Section 23 of the Land Acquisition Act :—

"(*a*) The market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause ;

(*b*) If it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him ;

* * * * *

(*g*) When the owner of the land or building has after the passing of the United Provinces Town Improvement Act, 1919, and within two years preceding the date with reference to which the market value is to be determined, made a return under Section 158 of the United Provinces Municipalities Act, 1916, of the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court may otherwise direct, and the market value may be determined on the basis of such rent :

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market value is to be determined, the court may take into consideration any increase in the letting value of the land due to such addition or improvement."

(*iii*) By Section 10 (2) the following has been added to sub-section (2) of Section 23 :—

"Provided that this sub-section shall not apply to any land acquired under the United Provinces Town Improvement Act, 1919, except—

(*a*) land acquired under sub-section (4) of Section 29 of that Act, and

(*b*) buildings in the actual occupation of the owner or occupied free of rent by a relative of the owner, and land apurtenant thereto, and

(*c*) gardens not let to tenants but used by the owners as a place of resort."

(*iv*) By Section 12 a new Section 24A has been added to the Land Acquisition Act on lines similar to the section added in the Schedule to the Calcutta Improvement Act, 1911.

(2) Similar amendments and additions have been made in the Schedule to the Cawnpore Urban Area Development Act, 1945.

PUNJAB

The Schedule to the Punjab Town Improvement Act, 1922, makes amendments similar to those made in the Schedule to the U.P. Town Improvement Act, 1919, except that Section 10 (2) provides that sub-section 2 of Section 23 of the Land Acquisition Act shall not apply to any land acquired under the Punjab Town Improvement Act, 1922.

CENTRAL PROVINCES

(1) The Schedule to the Central Provinces Municipal Act, 1922, makes amendments and additions similar to those made in the Schedule to Calcutta Improvement Act, 1911, and Section 7 of the Schedule inserts the following in sub-section 2 of Section 23 of the Land Acquisition Act after the words "in every case" :—

"except where the land acquired is, in the opinion of the local Government, grossly insanitary or unfit for human habitation,"

and for the word "fifteen" the word "ten" has been substituted.

(2) Sections 10 (3) and 12 of the Schedule to the Nagpur Improvement Trust Act, 1936, make additions similar to those made by Sections 10 (3) and 12 of the Schedule to the U.P. Town Improvement Act, 1919.

APPENDIX III

(Chapter III—Draft Highways Bill—United Provinces)

Power to remove encroachments on highways.

13. Whenever it is made to appear to a District Magistrate, or a Sub-Divisional Magistrate that any person has made or is making an encroachment upon a highway, he may issue a notice to such person requiring him within a time specified in the notice either to remove the encroachment, or to refrain from making the encroachment, or to show cause why the order in the notice should not be confirmed.

14. If a notice has been given to a person under the provisions of the preceding section, and such a person wilfully fails or neglects to comply with such a notice, then he shall be liable on conviction by a magistrate to a fine not exceeding five hundred rupees for every such failure, and, if in case of a continuing breach, to a further fine which may extend to five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

15. If the person to whom a notice has been given under section 13, fails to comply with such a notice, then, in addition to the prosecution under section 14, the District Magistrate, or the sub-divisional Magistrate may cause any encroachment made by the said person to be removed, and may recover all expenses incurred by him from the said person in the same manner as a fine.

16. (1) If the person to whom notice under section 13 has been issued, is the owner of the property in respect of which it is given, then the District Magistrate or the Sub-divisional Magistrate may, whether any action or other proceeding has been brought or taken against such person or not, require the person, if any, who occupies such property or a part of it under such owner, to pay to the District Magistrate or the Sub-divisional Magistrate, instead of to the owner, the rent payable by him in respect of such property, as it falls due, up to the amount recoverable from the owner under section 15; and any such payment made by the occupier to the District Magistrate or the Sub-divisional Magistrate shall, in the absence of any contract between the owner and the occupier to the contrary, be deemed to have been made to the owner of the property.

(2) For the purpose of deciding whether action should be taken under sub-section (1), the District Magistrate or the Sub-divisional Magistrate may require an occupier of a property to furnish information as to the sum payable by him as rent on account of such property and as to the name and address of the person to whom it is paid; and if the occupier refuses to furnish such information he shall be liable for the whole of the expenses as if he were the owner.

(3) All money recoverable by the District Magistrate or Sub-divisional Magistrate under this section may be recovered in the same manner as a fine.

17. (*a*) If, on or before the day fixed in the notice issued under section 13, any person claims proprietary title, which has not been already determined by a court of competent jurisdiction, to the land in respect of which the said notice has been issued, the District Magistrate or the Sub-divisional Magistrate shall require such a person to institute within one month a suit in the Civil Court for the determination of proprietary title, and shall postpone the proceedings till the decision of the suit.

(b) When the proceedings have been postponed under clause (*a*) of this section, if such a person fails to comply with the requisition the District Magistrate or the Sub-divisional Magistrate shall restart the proceedings and dispose of the case without any further delay.

18. (*a*) The District Magistrate or the Sub-divisional Magistrate may issue a notice requiring any person, who appears to have caused damage or obstruction to a highway, to repair the damage or remove the obstruction within a time prescribed in the notice.

(*b*) If the person to whom a notice has been issued under the preceding sub-section fails to comply with such a notice, the District Magistrate or the Sub-divisional Magistrate may cause the damage to be repaired or obstruction to be removed, and may recover all expenses incurred by him from the said person in the same manner as a fine.

19. Any person who wilfully or without reasonable cause, removes earth or any material from any highway or causes water to flow thereon, or in any other way causes damage to the highway or obstruction or inconvenience to the public using it, shall be liable to a fine which may extend to Rs. 50 or in default, to simple imprisonment for a period not exceeding three months.

APPENDIX IV

Interim Report of the Road-Lands Enquiry Committee

16th February 1946

[Submitted with reference to the War Transport Department letter No. PL 7(1) 44, dated the 11th/13th December 1945, which was addressed to the Chief Secretaries of all the Provincial Governments.]

Preamble.—In para. 3(5) of the above-mentioned reference, the Government of India have directed the Road-Lands Enquiry Committee to report within two months as a matter of immediate urgency what steps should be taken immediately in respect of the subjects of reference. The Committee started work on 7th December 1945 and issued a questionnaire in the following week. The questionnaire was communicated to all the Provincial Governments and the Chief Commissioners for furnishing replies to the Committee. The Committee have since visited the Provinces of Bihar, Bengal, and Madras and held discussions with the gentlemen deputed by these Governments to interview the Committee. Replies have not yet been received from the other Governments and the Chief Commissioners, and the Committee, therefore, submit this interim report on the basis of the information gathered so far.

Report

2. The Committee do not feel able to recommend any amendment of the Land Acquisition Act at this stage of their enquiry. We have a number of amendments under consideration. We consider piecemeal amendment of the Act undesirable, and prefer, therefore, to leave our recommendations for its amendment until we submit our final report. But there are certain measures which can be taken with the Act as it is, which will, in our opinion, have the effect of speeding up land acquisition in connection with the proposed schemes for National Highways and other post-war reconstruction schemes. These measures we now set out.

3. (1) Much of the delay in land acquisition proceedings occurs at the first stage prior to the submission of a notification under Section 4 (1) of the Land Acquisition Act. The present practice appears to be to require the requiring authority to furnish the Collector with detailed plans of the land required and other information. This, however, is not required by Section 4(1) itself, and Section 4(2) definitely contemplates survey and the preparation of plans after issue of a notification under Section 4(1). The survey and preparation of plans should, as provided in Section 4(2), follow the issue of the notification under Section 4(1). We, therefore, recommend that notifications be issued under Section 4(1) as soon as it has been decided that a project should be undertaken without waiting until a survey has been made and plans prepared. The Bombay Government have enacted a Governor's Act, the Land Acquisition (Bombay Amendment) Act, 1945, which adds new Sections 3(a) and 3(b) to the Act in order to take power to make a survey before a notification is issued under Section 4(1). It appears to us that the disadvantage of this is that the intention of Government to acquire becomes public as soon as survey operations are started. The desirability of avoiding this we proceed to explain.

(2) The importance of the early issue of a notification under Section 4(1) is to peg the market value to the date of the notification. For, in accordance with Section 23(1) firstly, the compensation to be awarded is to be based on the market value at the date of this notification. If a survey is undertaken before notification has been issued, information is likely to become public that Government are proposing to acquire land for a particular project. This may lead to speculative purchases at inflated values in the expectation that the project will cause a rise in the market value of land, or even to transactions at artificial values in the hope of creating evidence to support claims to compensation at a high rate. No doubt courts are expected to refuse to take such transactions into account in assessing the compensation to be awarded. But there is frequently difficulty in satisfying a court that a particular transaction is speculative or artificial. This was evidently realised in 1939 in the Madras Province, a Province in which survey takes place before any notification is issued under Section 4(1). For the Board of Revenue found it necessary to issue a Standing order that :—

> "The arrangements, if any, between the Officers of the department requiring land and those of the Revenue Department in regard to the selection of the land to be taken up should, where practicable, be made without divulging the intentions of the Government in order to prevent prices from being put up".

We find it difficult to say how this can be avoided when a survey is being undertaken on the spot. The danger appears to be particularly real now when there is so much money available for speculation and much speculation is taking place.

4. (1) The reason why Provincial Governments have been insisting on the preparation of plans before a notification is issued under Section 4(1) is no doubt the requirements of Section 5 (A). This Section entitles any person interested in any land which has been notified to object within 30 days after the issue of the notification to the acquisition of the land or of any land in the locality. Clearly no objection can be filed unless the notification defines with some precision what is the land which is proposed for acquisition. Section 17(4), however, empowers a Provincial Government to dispense with the provisions of Section 5(A) in cases of urgency in respect of the acquisition of any waste or arable land.

(2) The Government of Bengal have utilised Section 17(4) in respect of projects for National Highways and other Post-war Reconstruction Schemes contemplated in Bengal, and issued general notifications in Form 2, a form prescribed in the Executive Instructions of the Government of Bengal for use in such circumstances. [Reproduced in Appendix I hereto.] We think that there should be no difficulty in treating the proposed schemes for National Highways and other post war reconstruction schemes as cases of urgency when these works are being undertaken either to provide employment for demobilised soldiers or to combat inflation. Most Provincial Governments have agreed to this. We recommend, therefore, that Section 17(4) should be applied as it has been applied by the Government of Bengal.

(3) We recognise that Section 17(4) cannot be applied except in respect of waste or arable land. Consequently an opportunity will have to be given for objections to be filed under Section 5(A) in the case of any other class of land included under the general notification issued under Section 4(1). We do not think that there should be any practical difficulty in this, since it is hardly likely that in the case of construction of roads any large proportion of the land to be acquired will be other than waste or arable land, or, that if the issue of a second notification under Section 4(1) is considered necessary in respect of such other land, there will be speculative purchases or artificial transactions in respect of such pieces of land. We have, however, been referred to a legal opinion that, if any general notification has been issued under Section 4(1), which does not fulfil the requirements of Section 5(A), the defect can be cured by the service of individual notices on the persons affected inviting objections under Section 5(A) after a period of 30 days from the issue of the original notification under Section 4(1). This has been held to be sufficient compliance with the requirements of Section 5(A), while the validity of the original notification under Section 4(1) remains and the market value is pegged to the date of this notification.

5. (1) The Government of Bihar, and we understand the Government of Orissa also, have issued notifications under Section 4 (1) in general terms in a Form, of which we attach a specimen in Appendix II. They have not dispensed with the provisions of Section 5(A) in accordance with Section 17(4), but on the contrary have notified that objections under this Section must be filed within 30 days. There is some doubt whether such notifications can be held to comply with the requirements of Section 5(A). In fact the Executive Instructions of the Bihar and Orissa Governments provide a Form 4 for a notification under Section 4(1) on the same lines as Form 2 in use in Bengal [Appendix I]. Regarding it, however, the following Executive Instruction has been issued :—

> "As the notification in Form 4 cannot be regarded as giving sufficient warning to persons interested in the proposed acquisition to enable them to exercise the right of objection the Collector should take the order of the Local Government in each case through the Commissioner as to whether it is necessary to issue a second series of notifications under Section 4(1) as the survey proceeds and as the land to be acquired is selected and surveyed".

(2) Thus the issue of the notifications, in the form in which they have been issued in these cases, seems to conflict with these Governments' own Executive Instruction. We think that this should be brought to the notice of the Governments of Bihar and Orissa. If a second notification is issued in the manner contemplated in the Executive Instruction, then it is likely that a civil court will hold on a reference under Section 18 that the market value is to be determined with reference to the date of the second notification. This view has in fact been taken by the Madras High Court in similar circumstances in a case reported in 1932 Madras Weekly Notes ; page 853—Akilandammal *vs.* Special Deputy Collector, Trichinopoly. It may, however, be considered whether the position cannot be regularised by issuing individual notices to all persons interested in the land finally selected for acquisition giving them a further opportunity to file objections. The Government of Madras have issued an Executive Instruction to this effect as follows :—

> "In cases in which it has been impossible at the time of the issue of the notification under Section 4(1) so to describe all or any of the lands to be acquired that the persons interested therein can understand that their lands are likely to be needed for the public purpose, the individual notice should be issued as soon as the necessary details are available allowing fifteen days thereafter for the presentation of objections to the acquisition",

and have prescribed a form of notice, Form 3, which we reproduced in Appendix I-A.

(3) We recognise, however, that difficulty may be experienced in ascertaining who are all the persons who might have objected under Section 5(A) in view of the wide scope given to the right to object by Section 5(A) (1). If there is omission to serve individual notice on any person entitled to object, then this may invalidate the subsequent land acquisition proceedings. If this practical difficulty is felt to be serious by the Governments of Bihar and Orissa, and consequently they decide that they must issue second notification inviting objections under Section 5(A) as has been their previous practice then it appears to us that they should consider the desirability of enacting an Act for removal of doubts which will make it clear that, in the case of the notifications already issued, the market value of the land to be acquired under the Act is to be treated as the market value at the date of the first notification.

(4) But for Provinces, in which no notifications have yet been issued under Section 4(1), for the acquisition of land for the schemes for National Highways and other Post-war Reconstruction Schemes, we consider that notifications should be issued now at once, as soon as it has been decided what schemes are to be undertaken, and that their execution is urgent, in the general form employed in Bengal, Section 5(A) being dispensed with. If this is done, the Collector should not be required to make any valuation of the amount of compensation likely to be payable, which will be treated as other than a rough estimate. A more accurate estimate must await the enquiry which he will conduct in accordance with Section 8 after a declaration has been made under Section 6 of the land to be acquired and he has been directed to take order for the acquisition. In the Madras Province it is the practice to require the Collector to make a cadastral survey under the Madras Survey and Boundaries Acts of 1923 and 1925 as soon as a notification has been issued under Section 4(1). If our recommendation is accepted in this Province, then it appears to us that it will be more suitable that this survey should be undertaken at the time of the enquiry under Section 8.

6. As we have pointed out, the effect of issuing a notification under Section 4(1) is to peg the market value of the land to be acquired, for the purpose of calculating the compensation to be paid on acquisition, at the market value at the date of issue of the notification. We find genera agreement that the market value of land has risen considerably since 1939 in sympathy with th general rise in prices. It must be accepted, therefore, that, if notifications are issued now under Section 4(1), the compensation to be paid for the land to be acquired in pursuance of this will have to be calculated on the basis of a market value considerably in excess of the market value prevailing in 1939.

7. We have inquired particularly whether this rise in value can be attributed directly to the state of war and particularly to enemy action; and whether in consequence legislation should be undertaken to peg the market value of land to be acquired for public purposes to the market value at a date before this influence had effect. In the United Kingdom it became evident in 1940 that, as a consequence of the destruction of buildings by enemy bombing and the dispers of factories, land values would be greatly disturbed, and that the market value would be rais by the demand for land for building purposes which would be inevitable at the conclusion of the war. As early as 1941 the Prime Minister made a public announcement that land values in Post-war Reconstruction Schemes would be fixed at the rates current in 1941. In the same year a Committee known as the Uthwatt Committee was appointed to make specific recommendations as to the lines on which land should be controlled after the war. The Committee issued an *ad interim* report, and recommended that the market value of land should be pegged for all purposes of payment of compensation for its control and acquisition at the market value as it existed on 31st March 1939. This recommendation has been accepted by Parliament. We have considered whether similar action should not be taken now in India.

8. It is only in Bengal that we have found the view taken that the value of land has risen greatly as a direct consequence of enemy action. In this Province the rise in land values has been reported to be very considerable, particularly in the districts in proximity to Calcutta. From other Provinces the evidence so far received by us is that the rise in land values has been generally in sympathy with the general rise in the prices of all commodities, and in particular of agricultural prices. It is not considered that it can be attributed directly to the state of war or to enemy action.

9. In Bengal, the threat of Japanese invasion and the state of war resulting from this threat from December, 1941 onwards is reported to have had the following effect:—

(a) Nervous investors holding cash, ornaments, and bank deposits rushed to invest their money in land at rising prices in the belief that land would prove to be the safest investment should the Japanese invasion succeed. Such a tendency had started even earlier than December 1941 due to a sharp fall in the value of Iron and Steel shares on the Stock Exchange.

(b) Many persons made large profits out of business transactions with the Military authorities accompanying the military activity which developed in Bengal from December 1941 onwards. Such persons considered land to be the best investment for their money.

(c) The Military authorities found it necessary to requisition land on a considerable scale and paid high prices for it. They also bought out the interests of all tenants, and gave an undertaking that after the war they would hand back the land to the landlords free of all tenant's interests on repayment of the compensation paid. This was regarded as a very favourable proposition for landlords, and land was actually bought in the hope that the Military authorities would requisition it on these terms.

(d) Land has been bought by speculators in the neighbourhood of Calcutta in the expectation of a demand for land after the war for industrial expansion and extended residential facilities.

It is clear that the first two of these four factors are cases of genuine investment, however foolish. The element of speculation enters only into the last two.

10. (1) In order to decide whether the conditions set out above would justify legislation to peg the market value of land to a particular date, the Government of Bengal arranged for an inquiry and report by Rai M. N. Gupta Bahadur, a gentleman with especial experience of land